No. [redacted]

FILED
JUN 19 1957
JOHN T. FEY, Clerk

IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

NO. 7293

TUNGSTEN MINING CORPORATION,
Plaintiff-Appellant

vs.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA,
Defendant-Appellee

On Appeal From a Judgment of the United States District Court for the Eastern District of North Carolina

---

APPENDIX TO PLAINTIFF-APPELLANT'S BRIEF

F. L. FULLER, JR.
Durham, North Carolina

A. W. GHOLSON, JR.
Henderson, North Carolina

WHITEFORD S. BLAKENEY
Charlotte, North Carolina
Attorneys for the Plaintiff-Appellant

FILED
OCT 13 1956

APPENDIX TO PLAINTIFF-APPELLANT'S BRIEF

INDEX

	Page No.
Complaint	1
Answer	9
Opinion and Judgment of District Court	12
Testimony	
Bailey, B. B.	
Direct Examination	71
Re-Direct Examination	72
Fohl, Robert R.	
Direct Examination	76
Cross Examination	77
Foreman, J. B.	
Cross Examination	102
Holloman, William Cordell	
Cross Examination	94
Long, W. L.	
Direct Examination	32
Re-Direct Examination	70
Re-Direct Examination	113
Murdock, Jeter	
Direct Examination	110
McClelland, L. R.	
Direct Examination	73
Scott, Sam H.	
Direct Examination	22
Cross Examination	27
Re-Direct Examination	30
Re-Cross Examination	31
Re-Direct Examination	31

Page No.

Sweet, James R.
Direct Examination 55

Townsend, Jack
Direct Examination 111

Williams, C. R.
Direct Examination 46

Wood, Lucian Lincoln
Direct Examination 85
Cross Examination 87

Exhibits

Plaintiff's Exhibit 14 115

Plaintiff's Exhibit 17 117

Plaintiff's Exhibit 20 118

Plaintiff's Exhibit 21 119

Plaintiff's Exhibit 22 120

Plaintiff's Exhibit 23 121

Plaintiff's Exhibit 24 122

COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

Civil No. 742

TUNGSTEN MINING CORPORATION, Plaintiff	
vs.	COMPLAINT
DISTRICT 50, UNITED MINE WORKERS OF AMERICA, Defendant	

The plaintiff, complaining of the defendant, alleges:

1. That the plaintiff is a corporation duly organized and existing with its principal office and place of business within the State of North Carolina, being located at Tungsten, North Carolina, in Vance County, within the eastern District of North Carolina, and is now and was on January 9, 1953, and has been continuously since that time operating a tungsten mine and processing plant in Vance County. That in the course and conduct of its business the plaintiff at the time referred to produced tungsten concentrate in large quantities, all of which was shipped to customers outside the State of North Carolina in interstate commerce, and affecting commerce within the meaning and provisions of the Labor-Management Relations Act as amended.

2. That the defendant, District 50, United Mine Workers of America, is an unincorporated association and is a labor organization within the meaning and provisions of the Labor-Management Relations Act as amended, and that on January 9, 1953, and at all times since said date, including the date of the commencement of this action, the defendant's duly authorized officers or agents were and are engaged in representing or acting for employee members of said District 50, United Mine Workers of America, within the Eastern District of North Carolina and the jurisdiction of this Court.

3. The jurisdiction of this proceeding is conferred upon this Court by the provisions of the Labor-Management Relations Act as amended.

4. That on or about April 3, 1946, pursuant to a petition duly filed with the National Labor Relations Board by the United Stone and Allied Products Workers of America, C. I. O., (hereinafter called Stone Workers), a labor organization within the meaning of Sections 2(5) and 8(b)(4)(C) of the Labor-Management Relations Act as Amended, for certification as the collective bargaining representative of the employees in a unit appropriate for collective bargaining purposes, and a consent election by secret ballot conducted by the Board at which Stone Workers received a majority of the ballots cast by eligible voters, and Stone Workers was duly certified as the exclusive representative of all the company's employees except managerial employees, office Clerical employees, technical employees, chemists, salesman, and all supervisory employees.

5. Since about May 15, 1946, the plaintiff and Stone Workers have entered into successive collective bargaining agreements covering rates of pay, wages, hours of employment, and other conditions of employment of the plaintiff's employees in the certified unit. The last such agreement was entered into on or about December 18, 1952, to replace the agreement which expired on January 15, 1953. The present agreement covers the

period from January 15, 1953, until January 15, 1955, and is currently in force and effect.

6. That on January 9, 1953, the defendant engaged in and by orders, directions, instructions, counsel, picketing, encouraging picketing, appeals, threats, intimidation, co-ercion, and other means, induced or encouraged the employees of the plaintiff and of other employers to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, the object thereof being to force or require the plaintiff to recognize or bargain with Tungsten Local Union, United Mine Workers of America, and/or the defendant, as representatives of employees in the unit set forth in the foregoing paragraph of this complaint, notwithstanding that Stone Workers had been certified as the exclusive bargaining representative of such employees under the provisions of Section 9 of the Labor-Management Relations Act, as amended.

7. That the defendant, by the acts and conduct hereinbefore set forth in this complaint, did thereby engage in an unlawful and unfair practice within the meaning and provisions of the Labor-Management Relations Act as amended.

8. That on January 9, 1953, the defendant, pursuant to the acts and conduct hereinbefore alleged, caused a strike of the employees of the plaintiff for the purposes and objects as hereinbefore set out, the said actions on the part of the defendant and the strike being unlawful under the terms of said Act, causing damage to the plaintiff as hereinbefore set out.

9. That said strike, attended with violence, continued until February 3, 1953, it being on that date restrained by an order of The Honorable Don Gilliam, United States Judge for the Eastern District of North Carolina.

10. That the National Labor Relations Board is an agency of the United States, and under the provisions of the Labor-Management Relations Act as amended has exclusive jurisdiction to hear and determine the facts relating to charges of unfair and unlawful labor practices. That the plaintiff filed charges against the defendant with the Regional Office of the National Labor Relations Board pursuant to which a complaint was issued, and hearing was held in which proceeding the plaintiff in this action and the defendant in this action were parties; That the National Labor Relations Board filed a decision in this action binding upon all parties thereto finding that the defendant was guilty of unfair labor practice, setting forth and finding the facts to be as heretofore alleged in this complaint, which decision was final, and the defendant is bound by the said decision and all findings and conclusions therein, and said decision is attached hereto and made a part of this paragraph and of this complaint by specific reference thereto, and said decision and its findings are res judicata and specifically pleaded in bar of any denial by the defendant of any of the allegations in this complaint set forth in all preceding paragraphs.

11. That by reason of the unlawful and wrongful acts of the defendant as alleged and as determined by the National Labor Relations Board, production in the plaintiff's mine was stopped and curtailed during and subsequent to the strike, causing the plaintiff to suffer damages for failure to produce and deliver tungsten to its customers and depletion of its stock pile in at least the sum of $200,000.00. In addition thereto, it was necessary for the plaintiff to employ additional guards to protect its property, to hire inexperienced labor and train them, and to incur other expenses, as set forth below:

(1) Hire of guards,

January	$4,223.68
February	3,358.92
March	2,356.48
April	1,441.28

	May	775.16	
	June	256.44	
	Total,		$12,420.96
(2)	Maintenance of Guard House all in January	$	425.60
(3)	Pistols and holsters purchased in January	$	668.40
(4)	Bus fares, transporting laborers to and from mine, January	$1,072.70	
	Taxi fares, transporting laborers to and from mine, January	90.00	
	Total,		1,162.70
(5)	Damage to employees' cars by strikers, January	$ 36.55	
	Damage to employees' cars by strikers, February	114.05	
	Total,		150.60
(6)	Personal injuries, February, to B. B. Bailey, Assistant Superintendent of plaintiff		47.70
(7)	Photography of strikers, picket line, picket headquarters, et cetera, January	$ 49.00	

	February	30.00	
	July	32.00	
	Total,		111.00
(8)	Spot radio announcements, January,		242.90
(9)	Newspaper advertisements in connection with strike, January,		$126.00
(10)	Maintaining employment office in Henderson,		
	February	$ 17.68	
	March	3.00	
	Total,		20.68
(11)	Payments to Utah Construction Company under contract for which work could not be performed		10,286.61
(12)	Additional office help in January made necessary by strike		339.48
	Additional office help in February made necessary by strike		369.74
(13)	Increase in payroll taxes and compensation insurance made necessary by guards, etc.,		
	January	$ 183.49	
	February	149.14	

	March	95.94	
	April	58.68	
	May	31.54	
	June	10.72	
	Total,		529.51
(14)	Miscellaneous expenses, January,		105.88
	Clerk Superior Court, Vance County, January,		24.00
			$ 27,031.76
			$200,000.00
	GRAND TOTAL,		$227,031.76

WHEREFORE, plaintiff prays judgment against the defendant for $227,031.76, and for such other and further relief as it may be entitled to have.

GHOLSON & GHOLSON
BY A. W. Gholson, Jr.
Henderson, North Carolina

READE, FULLER, NEWSOM & GRAHAM
BY F. L. Fuller, Jr.
Durham, North Carolina
Attorneys for the Plaintiff

NORTH CAROLINA

VANCE COUNTY

W. L. Long, being duly sworn, says that he is an officer, to-wit, Vice President, of Tungsten Mining Corporation, the plaintiff in the above entitled action; that he has read the foregoing complaint and it is true of his own knowledge, except the matters and things therein stated upon information and belief, and as to those he believes it to be true.

W. L. Long

Subscribed and sworn to before me,
this 27th day of November, 1953.

Eula S. Gulick
Notary Public

My Commission expires: Aug. 17, 1954.

(SEAL)

ANSWER

The defendant, answering the complaint of the plaintiff, says:

1. That as to the allegations contained in paragraph 1, the defendant admits that the plaintiff is a corporation duly organized and existing with its principal office and place of business within the State of North Carolina, being located at Tungsten, North Carolina, in Vance County, within the Eastern District of North Carolina, and is now and was on January 9, 1953, and has been continuously since that time operating a tungsten mine and processing plant in Vance County; and that in the course and conduct of its business the plaintiff at the time referred to produced tungsten concentrate which affected commerce within the meaning and provisions of the Labor-Management Relations Act as amended. That all other allegations contained in said paragraph 1, not herein admitted, are untrue and denied.

2. That paragraph 2 is admitted to be true.

3. That paragraph 3 is admitted to be true.

4. That paragraph 4 is untrue and denied.

5. That the allegations contained in paragraph 5 are untrue and denied, and further answering said paragraph, the defendant says and alleges that it had on December 18, 1952, and thereafter, by a voluntary act of said employees, more than a majority of the employees of the plaintiff corporation signed up and obligated as members of the defendant organization, and such employees were entitled to have the plaintiff corporation recognize this defendant as their bargaining representative, and such duty rested upon the plaintiff corporation, notwithstanding the plaintiff corporation attempted to bargain with an affiliate of the C.I.O. relative to rates of pay, wages, hours of employment and other conditions of employment, which the plaintiff corporation knew was contrary to the wishes of the vast majority of its employees.

6. That paragraph 6 is untrue and denied.

7. That paragraph 7 is untrue and denied.

8. That paragraph 8 is untrue and denied.

9. That paragraph 9 is untrue and denied; except it is not denied that an order was issued by the Honorable Don Gilliam, United States Judge for the Eastern District of North Carolina, on February 3, 1953.

10. That paragraph 10 was stricken on motion of the defendant by order of said United States Judge dated November 18, 1954.

11. That paragraph 11 and all its subdivisions are untrue and denied.

WHEREFORE, the defendant prays judgment:

(1) That the plaintiff corporation recover nothing of the defendant by this action and that the same be dismissed.

(2) That the defendant recover its costs.

(3) That the defendant have such other and further relief as to the Court may seem just and proper.

(4) That the defendant, by this demand, be granted a trial by jury.

Armistead J. Maupin
Armistead J. Maupin
930 Insurance Building
Raleigh, North Carolina

Charles P. Green
Charles P. Green
824 Insurance Building
Raleigh, North Carolina

Banks Arendell
Banks Arendell
824 Insurance Building
Raleigh, North Carolina
ATTORNEYS FOR THE DEFENDANT

DISTRICT OF COLUMBIA

CITY OF WASHINGTON

O. B. Allen, being duly sworn, deposes and says that he is an Official of District 50, United Mine Workers of America, to-wit, its Secretary-Treasurer, and as such has authority to verify this Answer; that he has read the foregoing Answer and that the same is true of his own knowledge except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

O. B. Allen

Subscribed and sworn to before me,
this 8 day of December, 1954.

Notarized

NOTARY PUBLIC

My Commission Expires: _____

OPINION AND JUDGMENT OF DISTRICT COURT

I heard the evidence in this civil action without a jury. The plaintiff's prayer for judgment grew out of a strike of the employees of the plaintiff at its tungsten mine and processing mill located in Vance County, North Carolina. What follows is a chronological summary of the pertinent events, as I find them from the evidence.

Tungsten Mining Corporation, referred to as "Tungsten", and United Stone & Allied Products Workers of America, C.I.O., referred to as "Stone Workers", after an election, entered into a collective bargaining agreement on April 3, 1946. Stone Workers was certified by the National Labor Relations Board as the Collective Bargaining Representative of the employees of Tungsten. Contracts between Tungsten and Stone Workers were always in force from May 15, 1946, until January 15, 1953. Tungsten and Stone Workers changed the anniversary date to January during the interim to have it approximately coincide with the calendar year for their mutual convenience.

William Holleman and many of his fellow workers had become dissatisfied with the representation afforded them by Stone Workers. In October, 1952, Holleman contacted Frank Lumpkin, a relative, of Hopewell, Virginia, employed at the Hercules Powder Company; and the two discussed the process of changing unions. The union at Hercules Powder Company was District 50, United Mine Workers of America, the defendant before me, referred to as "District 50". Shortly after Holleman made this inquiry, W. A. Shuey, an officer of the Hercules Local, visited Tungsten, talked with Holleman, and supplied application cards for membership in District 50.

An organizing campaign launched by Holleman proved to be a success. In short order, 386 of Tungsten's approximately 400 employees signed up with District 50. Of these 386, 269 who had been members of Stone Workers also signed forms to sever relations with that union and cancel their dues check-off authorization held by the Company.

About the middle of October, 1952, Robert Fohl, Regional Director for the United Mine Workers; Lucian Wood, Field Representative for District 50; and Shuey came to Tungsten and conferred with James R. Sweet, Vice President and General Manager of Tungsten. The District 50 representatives informed Sweet of their union's majority status at Tungsten. They explained to him that union's avoidance of the National Labor Relations Board's facilities and offered to have District 50's status verified through the medium of some other disinterested third party. Local ministers and the North Carolina Department of Labor were suggested. There was, of course, no offer or request for the membership lists to be handed over directly to Tungsten.

A few days later, J. B. Foreman, a national representative of Stone Workers, arrived on the scene. He came in the capacity of Administrator of the Tungsten Local, having been appointed by Sam Scott, President of Stone Workers International, under a clause in the Stone Workers' constitution that provides for such an appointment in the event that a crisis is found to exist in a local. Foreman quickly lost any doubts he may have held as to the existence of a crisis. At a meeting of the majority of Tungsten's employees he was shouted down without a chance to make himself heard. Inquiry among the workers convinced him that virtually all had joined District 50, and he so informed the Company.

On November 13, 1952, George Pendley, Secretary of Stone Workers Local, sent to Tungsten a letter advising that the contract with Stone Workers, due to expire January 15, 1953, should not be renewed. Copies were sent to Stone Workers and the National Labor Relations Board.

W. L. Long, Vice President and General Counsel of Tungsten, and Sweet were uncertain what course Tungsten should follow in the situation that confronted them. In particular, they were puzzled by Foreman's claimed power to act for the Stone Workers. Long and Sweet attended a company meeting in New York in December. It was arranged for them to confer while

there with an attorney for the Stone Workers from Boston. Foreman and Scott were also present at this conference.

Long and sweet were readily convinced of Foreman's capacity to act for the Stone Workers Local in negotiating with Tungsten. Whether or not substantial agreement was reached there about a new contract is not at all clear from the evidence. Each of those present who testified before me had his own version of what was said and done in that New York hotel room more than three years before the trial. Regardless of where the negotiations were had, Tungsten and Stone Workers did enter into a new contract a few days later.

Through December and the early days of January, 1953, District 50 meetings and organization continued. Tungsten made no effort whatsoever to accurately evaluate the obvious situation of which it had full and ample notice. Before and during the strike Tungsten steadfastly refused to even consider that the Stone Workers Local was a defunct organization. Instead, by the testimony of its officers, Tungsten placed its reliance on three principal factors: (1) Advice from the N.L.R.B., which was completely out of touch with the situation; (2) Between 250 and 270 dues checkoff authorizations that it still held; (3) Stone Workers' N.L.R.B. Certification, which was more than six and one-half years old. Long, as General Counsel of Tungsten, was (and still is) of the opinion that Tungsten should refuse to bargain with any union not certified by the N.L.R.B.

On January 9, 1953, the storm broke. Holleman, who was then President of the unrecognized District 50 Local, was working in the mine with James Knight, Secretary of the new organization. The two were doing carpentry work in an overhand stope. About 11:30 A.M., it became necessary for them to descend to the tunnel beneath to cut a piece of lumber for their work in the stope. This done, they proceeded to eat their lunch before the regulation noon lunch hour. The assistant mine foreman and the shaft boss arrived. Holleman and Knight were fired on the spot.

They left the premises and began to meet employees on the next shift, and word of their discharge spread. By early evening a fullfledged strike was in progress. The days that followed were characterized by large scale confusion about the gates to the mine and the surrounding countryside. The confusion was attended by violence and rowdyism. On January 14, an order from the North Carolina Superior Court limited the number of pickets about the gate to six and forbade others from approaching within a hundred feet. A defendant named in that court order was District 50.

Fohl and Wood were about the scene of the strike frequently before the restraining order was issued which named their organization as a defendant. When these District 50 representatives learned that Holleman and Knight had been fired, they advised the two to present their grievance to Tungsten under the Stone Workers' contractual procedure. Holleman and Knight declined to do so, insisting that such a move would be futile. Wood was present on the night of the fourteenth when the restraining order was served. He assisted a Highway Patrolman in stepping off the one hundred feet specified in the order.

On January 15, 1953, Tungsten's old contract with Stone Workers expired and District 50 formally adopted the six day old strike for the purpose of getting recognition. Strike headquarters was established at a rented building some distance from the mine. The union furnished picket signs demanding recognition. At all times, before and after the fifteenth, District 50 representatives cautioned strikers against violence. A federal injunction was issued by this Court on February 3, 1953, at which time the strike ended and representatives of District 50 sent copies of the injunction to all on strike, posted notices of it, and left the scene for good.

Tungsten's action against District 50 is founded on Title 29, U.S.C.A. Sec. 187. The pertinent sections of that statute read as follows: "(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting com-

merce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service, where an object thereof is —(3) *forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of Section 159 of this title;* (b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of Section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

The language above is found also in Section 158 (b) (4) (C). In this section the action defined in the repeated language is proscribed as an unfair labor practice for which an injunction is the appropriate remedy. Interpretations of this key language in the context of Section 158 are persuasive for determining the meaning in the context of Section 187. Such an interpretation was recently made in *Ralph E. Kennedy, Regional Director of the Fourteenth Region of the National Labor Relations Board v. Warehouse & Distribution Workers Union, Local 688*, 29 C.C.H. Labor Cases 69736 (D.C. Mo., 1956). The facts of this case are readily seen to present a striking parallel to those of the case at bar.

Following an election by secret ballot, Coca-Cola Bottling Company Salesmen Association (herein called Association) was duly certified as the exclusive bargaining representative of the employees of Coca-Cola Bottling Company of St. Louis, Missouri, (herein called Coca-Cola). A collective bargaining agreement was entered into between Association and Coca-

Cola on July 17, 1953, providing for its expiration on November 1, 1955. Negotiations for a new contract were commenced in June, 1953, but none was agreed upon.

On September 2, 1955, respondent Warehouse & Distribution Workers Union, Local 688 (A.F.L.), (herein called Local 688), filed with National Labor Relations Board a petition for election of collective bargaining representative of the employees of Coca-Cola. Hearings on the petition were held. This procedure for recognition was closed to the defendant before me, District 50, because of its well known refusal to bare its affairs to public scrutiny. However, in *United Mine Workers of America v. Arkansas Oak Flooring Company*, decided April 23, 1956, 351 U. S. 62, the United States Supreme Court made it clear that the National Labor-Management Relations Act "does not make it a condition that the representative . . . shall be certified by the Board, or even be eligible for such certification." District 50 U.M.W.A. v. N.L.R.B., 4th Circuit, decided June 5, 1956

About October 25, 1955, while a decision on the petition was pending, Local 688 made demands on Coca-Cola for immediate recognition as the collective bergaining representative of the employees in the certified unit (Association) and that Coca-Cola negotiate a new agreement with Local 688, the latter union threatening to strike and picket Coca-Cola's premises to enforce its demands. Coca-Cola rejected such demands. All this occurred in the face of the certification of Association and before decertification.

Local 688 called the threatened strike on November 9, 1953, and the strike and picketing continued thereafter.

Association continued to function after October 24, 1955; Coca-Cola continued to deduct Association's membership dues from employees' wages and Association continued to accept the payments of such dues checked off; and Coca-Cola was at all times in possession of authorizations for check off of Association dues which had not been formally revoked in writ-

ing from about 173 of Coca-Cola's approximately 196 employees.

Judge Moore found two other important facts as follows:

"(a) Whatever may have been the membership of the employees, by October 24, 1955, the Association had clearly lost the support of a majority of the employees in the unit, and a majority had voluntarily designated Respondent as the agent, they desired to be their collective bargaining representative. Respondent retained the voluntary allegiance of a majority of the employees in the unit until the trial in this case.

"(b) Before the time of the strike the Company, while it may not have been convinced that Respondent represented a majority of employees in the unit, had good cause to doubt, and did doubt, that the Association retained the support of a majority."

Upon the foregoing facts Judge Moore rendered his decision, based on these conclusions among others:

"Since the relief sought by petitioner is being denied on other grounds, it is not necessary to consider whether the Association's status, or its representation of the employees in the unit, had deteriorated to such an extent that the Association's certification should for this reason be regarded as totally ineffective.

"Because the Association had, by November 9, 1955, when the Association's certification was more than one year old, lost the support of a majority of the employees in the bargaining unit, and the Company had at least a bona fide doubt that the Association retained the support of a majority, the Company was then no longer required by law to bargain collectively with the Association, but was free to " 'refuse to bargain further with it.' " *Brooks v. National Labor Relations Board*, 348 U. S. 96, 104 — — — An object of Respondent's conduct, therefore, was to require the Company to violate its duty of

neutrality between the Association and Respondent — — — — not to require the Company to violate its duty to bargain with the certified union.

"Section 8 (b) (4) (C) of the act proscribes strikes "having as their purpose forcing any employer to disregard his obligation to recognize and bargain with a certified union and in lieu thereof to bargain with or recognize another union". — — — — That section does not, as the Board contends, proscribe strikes directed toward compelling the employer to violate his duty of neutrality between two competing unions, nor does it proscribe strikes to gain an object (recognition) which could alternatively be gained, eventually, by means of the peaceful processes of the Board's election procedures, for it is not written in those terms, and there is no rational relation between these circumstances and the criterion established by the Act: whether 'another labor organization has been certified as the representative of (the) employees under the provisions of Section 9.' A strike is not rendered unlawful by the presence of such circumstances. — — — — Accordingly Section 8 (b) (4) (C) does not proscribe the conduct of Respondent in this case.

"The petition for an injunction should therefore be denied."

To my mind Judge Moore's opinion from which I have quoted at length is sound and, if followed, completely determinative of the case now before me.

The cases hold that while two unions are vying for recognition the employer is obligated by law to remain neutral, but, as pointed out in *District 50 U.M.W.A. v. N.L.R.B.* above cited, this does not "require that the employer refuse to recognize a bargaining agent chosen by a majority of his employees if such majority is so clearly established that there can be no true question with regard thereto." And also under the cases this right of the employer exists as a general rule where there has been a certification by the Board following an election,

provided that one year has elapsed since the certification. Here, about six years had passed since the certification and I am of the opinion that Tungsten was at liberty to recognize District 50 upon clear proof that a majority of the employees was in January, 1953, committed to that union and had repudiated Stone Workers. This unquestionably was the situation and Tungsten was on notice. Tungsten really makes no attack on the large "sign up" which had been obtained by District 50 and there is no vestige of proof or even a suggestion that the signatures on the cards were not authentic. The record indicates that Tungsten had no hand in switching employees from Stone Workers to District 50. So that, it is my view that Tungsten was free to recognize District 50 in spite of the Board's certification of Stone Workers, but Tungsten preferred a contrary course, taking the position that it would recognize only a union certified by the N.L.R.B. Such position was without justification in law, as above pointed out.

Fairly considered, it seems to me, the action of defendant in adopting the strike, after the termination of the contract between Tungsten and Stone Workers, when in fact Stone Workers was no longer the choice of the employees as bargaining agent, should not be held to be in violation of the statute. No other avenue of relief was open to the defendant and the majority of the employees which it represented. Recourse to the Board was not available, but, as held in *U.M.W.A. v. Arkansas Oak Flooring Co.*, above, and other cases, defendant was not precluded from representing employees as bargaining representative. It should not be held on the facts here that defendant's object was to force Tungsten to disregard its obligation to Stone Workers. The object was rather to lead Tungsten away from the generally prevailing obligation of neutrality where a real contest betwen two unions is on, to cause it to act in the light of realities, to get Tungsten to realize and accept the fact that it was at that time under no obligation to Stone Workers, which was no longer the bargaining agent "designated or selected for the purpose of collective bargaining by the majority of the employees."

I am adjudging that District 50 is not liable to Tungsten because Stone Workers, despite its certification, was no longer a going concern, nor did it represent the overwhelming majority of Tungsten's employees—a situation of which Tungsten had every reason to be well aware. In view of this holding, it is unnecessary to discuss or decide the question of agency under Title 29, U.S.C.A., Section 185, or the question of liability for wildcat strikes that are adopted by a defendant union.

In accord with the foregoing opinion, it is hereby ordered, adjudged, and decreed that the plaintiff Tungsten Mining Corporation recover nothing of the defendant District 50, United Mine Workers of America by this action. It is further ordered that the defendant recover of the plaintiff the defendant's costs incurred in the defence of this action.

s/ Don Gilliam

UNITED STATES DISTRICT JUDGE

TESTIMONY

(Page 2)

SAM H. SCOTT, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GHOLSON:

Q. What is your name?

A. Sam H. Scott.

Q. What position do you hold?

A. International President United Stone and Allied Products Workers of America.

Q. Where do you live?

A. Winston-Salem, North Carolina.

Q. State whether in March, 1946 you occupied the same position with United Stone and Allied Products Workers of America.

A. In March, 1946 I was International Representative. I was not an officer at that time.

Q. When did you become president?

A. September, 1946.

Q. State whether or not pursuant to your position with United Stone and Allied Products Workers of America you contacted and entered in negotiations with Tungsten Mining Corporation?

A. I did.

Q. When was that?

A. It was after the election and certification in 1946, as I recall. I don't have the record with me. Our first contract

was dated sometime in May, 1946. It may have been earlier but I (P. 3) believe that was the date.

THE COURT: What date is it as alleged in the complaint?

MR. GHOLSON: May 15, 1946.

Q. I hand you this and ask you what that is?

A. This is the contract between the United Stone and Allied Products Workers of America Branch 98 and Tungsten Mining Corporation.

THE COURT: We will agree that we can say "Stone Workers". This is a contract signed between the committee and myself and management of the company.

Q. What is the expiration date of that contract?

A. The anniversary date I don't recall but I will see from the document. May 15.

MR. GHOLSON: I want to prove that during the entire period from 1946 until the date of this contract there has been continuous renewal of contracts between Stone Workers and Tungsten Mining Corporation.

MR. GREEN: No, sir, we will not agree to that. We don't think it is competent. They will have to rely upon the contract which was in existence.

OBJECTION BY DEFENDANT TO ALL EVIDENCE IN RESPECT TO ANY CONTRACT EXCEPT THE CONTRACT CURRENT AT THE TIME OF THE STRIKE.

Q. State whether or not this is the contract entered into May, 15, 1946?

A. This is the contract that was entered into, or a copy of it.

(P. 4)

Plaintiff introduces in evidence the contract entered into May 15, 1946 and same is marked "P-3".

THE COURT: In each instance when an objection is overruled and contract is admitted the defendant moves to strike it from the record. The motion in each instance is denied.

Q. What is this, Mr. Scott?

A. Contract dated May 15, 1947. This is the second contract year between the parties.

Q. Did that become effective at the termination of the 1946 contract?

A. It did.

Plaintiff introduces in evidence the contract entered into May 15, 1947, and same is marked "P-4".

OBJECTION BY DEFENDANT. OVERRULED.

Q. What is this?

A. Contract dated May 15, 1948. All of the three contracts signed by the committee of the company and the Local Union.

Q. I ask you the duration of that agreement?

A. Two years and for year to year thereafter unless terminated by either party sixty days prior to the anniversary date.

THE COURT: Before that they were annual contracts?

A. Yes, sir.

The plaintiff introduces in evidence the contract dated May 15, 1948, and same is marked "P-5".

OBJECTION BY DEFENDANT OVERRULED.

(P. 5)

Q. I hand you this and ask you what this is?

A. Contract dated May 15, 1950 between Tungsten Mining Corporation and Stone Workers, Branch 98.

Q. When was that made?

A. May 15, 1950.

Q. What is the expiration?

A. For a period of approximately eighteen months. To run until January 15, 1952, which is the anniversary date.

Q. Was there any notice served to terminate it?

A. I don't recall. I suppose the records will show. From time to time notice was served to modify and whether this was—

OBJECTION BY DEFENDANT.

Q. Mr. Scott, I ask you what is that paper you have?

A. This is a stipulation to extend the 1950-'52 contract for another year with certain changes in rates of pay and the anniversary date.

Q. Read that provision.

OBJECTION BY DEFENDANT OVERRULED.

A. "Section 27 be amended in the third line thereof so as to change 1952 to 1953".

Plaintiff introduces in evidence contract dated May 15, 1950, marked "P-6".

Plaintiff introduces in evidence stipulation extending the term of the May 15, 1950 contract to January 15, 1953, and same is marked "P-6a".

(P. 6)

OBJECTION BY DEFENDANT TO THE INTRODUCTION OF EXHIBITS "P-6" and "P-6a". THE OBJECTION IS OVERRULED.

Q. What is this paper?

A. Agreement between Tungsten Mining Corporation and Stone Workers Local 98 and Stone Workers International Union dated January 15, 1953.

Q. When was that contract agreed upon?

A. This contract agreed upon just prior to January 15, 1953. I don't have the date at my fingertips.

Q. This contract went into effect on January 15, 1953 immediately on termination of the previous contract, plaintiff's Exhibit 6?

A. It was negotiated prior to January 15 to become effective January 15.

Q. I ask you if it was negotiated in December, 1952?

A. It could have been. It was in the sixty day period prior to January 15, 1953.

Q. I ask you to look at the agreement and refresh your recollection.

A. It was made and entered into 18 day of December, 1952 by and between Tungsten Mining Corporation and United Stone Workers, Local 98, hereinafter designated as the Union. That was within the sixty day period prior to January 15, 1953.

MOTION BY DEFENDANT TO STRIKE THE ANSWER. MOTION DENIED.

Plaintiff introduces in evidence agreement between Tungsten Mining Corporation and Stone Workers, dated (P. 7) December 18, 1952, becoming effective January 15, 1953, and same is marked "P-7".

OBJECTION BY DEFENDANT OVERRULED.

Q. Who was this contract signed by?

A. J. B. Foreman, Administrator for International and Local Union, and W. L. Long, Vice President and General Counsel, J. R. Sweet, Vice President and General Manager. B. B. Bailey, Assistant to the General Manager, representing the Tungsten Mining Corporation.

Q. Who was J. B. Foreman?

A. Appointed as Administrator of the affairs of the Local Union prior to the negotiations.

Q. Appointed by you?

A. By the executive board.

Q. Did he have authority to enter into these negotiations and conclude that contract on the part of the Union?

A. Yes, sir.

Q. Has there been any period of time from May 15, 1946 until the present time that there has been any lapse in the contract agreements between the Tungsten Mining Corporation and your Union?

OBJECTION BY DEFENDANT OVERRULED.

A. No, sir.

(P. 8)

CROSS EXAMINATION OF MR. SAM H. SCOTT
BY MR. MAUPIN

Q. You testified a purported contract was entered into sometime in 1952?

A. Yes.

Q. You testified in May, 1946 you first came into this company?

A. Yes.

Q. You organized a union?

A. Yes, sir.

Q. How many members you have?

A. I don't recall but the certificate shows a majority.

Q. Shows 117 voted?

A. I don't recall the number.

Q. And at that time you organized them and called an election through the Labor Relations Board?

A. That's right.

Q. And won the election?

A. Yes, sir.

Q. Another union competing with you.

(P. 9)

A. An independent union. Group of workers of Tungsten Mining Corporation at that time.

Q. You won over them?

A. Yes, sir.

Q. You began to negotiate a contract with the officers of Tungsten?

A. Yes, sir.

Q. You did negotiate a contract?

A. Yes.

Q. That contract entered into May 15, 1946?

A. Effective May 15, 1946.

(Page 14)

Q. What bargaining did Stone Workers do with Mr. Long and Mr. Sweet or anybody connected with Tungsten Mining Corporation in December, 1952?

OBJECTION BY PLAINTIFF.

Q. This 1953 contract which was entered into in December, 1952, under what circumstances was that entered into?

OBJECTION BY PLAINTIFF OVERRULED.

A. There were conferences held between Mr. Sweet, Mr. Long, myself and Mr. Foreman and president of the local

union, Frank Swan, and I am not sure but two or three others on the committee that worked out terms and wages on this contract same as they have always been worked out. If you will look at the wage scale from time to time, how they progressed from year to year, from contract to contract, you will find there have been negotiations every time a contract has been made and many hours and days ran into weeks, sometime strike votes taken and strike actions pending.

Q. You say you had several meetings with Mr. Long and Mr. Sweet and others?

A. Yes, sir.

Q. Where?

A. There were meetings in Mr. Long's and Mr. Sweet's office at the Tungsten mine.

(P. 15)

Q. Where else?

A. One meeting between our attorney and Mr. Long and Mr. Sweet and myself in New York to determine the procedure the company could follow in the administration of our organization. Our attorney is from Boston. Mr. Long was in New York on business for his firm and we requested a conference with Mr. Long, our attorney did, and he agreed to meet us at a stipulated place in New York in order that our attorney might go over the matter with him, and Mr. Long's purpose in requesting our attorney to be present to determine whether or not he had the right to bargain with the administrator of the local union. That is what transpired there. Negotiations of the contract was brought to the Tungsten mine.

(Page 23)

Q. You later learned that a majority of the workers there passed a resolution and as a result of the resolution you received a letter from Mr. George Pendley the next day?

A. No, I didn't receive any letter from Mr. Pendley after that day.

Q. Received copy of a letter?

A. No.

THE COURT: Who was Mr. Pendley?

A. He was an employee of the Tungsten mine.

BY MR. MAUPIN:

Q. He was the secretary and treasurer of your defunct union in the Tungsten mine?

OBJECTION BY PLAINTIFF

THE COURT: You are including in your question a conclusion as counsel who is very much interested in the case.

MR. MAUPIN: Pendley was his own secretary and treasurer.

THE WITNESS: That is an unqualified untruth. Mr. Pendley was never secretary and treasurer.

Q. He was recording secretary?

A. He may have been. As I remember now the corresponding secretary's office became open and I don't know that there was a corresponding secretary.

RE-DIRECT EXAMINATION OF MR. SAM H. SCOTT:

Q. As I understand it the purpose of the trip to New York was (P. 24) Mr. Long wanted to determine the authority of Mr. Foreman so he would know who to deal with in dealing with your union?

A. Yes, sir.

Q. The negotiations of the contract in regard to the wage and hour and so forth were conducted in the office of Tungsten mine?

A. Yes, sir.

Q. I ask you when these negotiations went on between Mr. Long and Mr. Sweet for the Company, you and Mr. Foreman for International, and Mr. Swan, Charles Pittman and Clem Martin for the local union.

A. Mr. Swan and Pittman and one other, a colored boy. It could have been Martin.

Q. Did they consult with you on the terms and conditions of the new contract?

A. They did.

Q. It has been brought out that the strike occurred January 9, 1953. I ask you if your union called or condoned that strike?

A. No, sir.

RE-CROSS EXAMINATION OF MR. SCOTT:

Q. Did Mr. Swan, Mr. Pittman and Mr. Martin go to New York with you?

A. No, sir.

Q. They met you in the office?

A. Yes.

Q. You presented them a packaged plan that had been determined (P. 25) in New York?

A. No, sir.

RE-DIRECT EXAMINATION OF MR. SCOTT:

Q. You are still recognized as bargaining agent of Tungsten mine today?

A. Our union is, yes, sir.

Q. And has been since 1946?

A. That's right.

THE COURT: The contract in force on the date of strike was later superseded?

A. Yes, sir, by the one negotiated by the administrator which was six days after the strike.

Q. There is still a contract between Stone Workers and the mine?

A. Yes, sir. Biggest organization we have ever had.

Q. Is that the one that was negotiated by the administrator?

A. No, sir. That was terminated as of the 15 of this past January and now there is a two year contract in effect effective from January, 1956 until January, 1958.

W. L. LONG, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FULLER:

(Page 31)

Q. Do you know Mr. Fohl, or did you meet him?

A. I didn't until this trial. In January I met him and I see him here today.

Q. You didn't have any meetings or contact with him prior to that?

A. No, sir.

Q. You recall Mr. Fohl at the hearing in January, 1953?

A. Yes, sir.

Q. I believe he took part in that hearing?

(P. 32)

A. Yes, sir.

Q. Do you recall in what capacity he appeared?

A. He said he was Regional Director of District 50 as I recall.

Q. Did you know Mr. Holloman?

A. Yes.

Q. Tell the Court what you know about him.

OBJECTION BY DEFENDANT OVERRULED.

A. Mr. Holloman worked in our office in the engineering department. I had known him sometime prior to the strike.

Q. Is he here?

A. Yes, sir.

Q. Did he participate in the hearing in January, 1953?

A. Yes, he was a witness.

Q. In what capacity did he testify?

OBJECTION BY DEFENDANT OVERRULED.

Q. Mr. Holloman testified that he was the Local President of the Local United Mine Workers, District 50.

Q. Did you know Mr. Lucian L. Wood in the hearing?

OBJECTION BY DEFENDANT TO ANYTHING PERTAINING TO THE HEARING IN 1953. THE OBJECTION IS OVERRULED.

A. Yes, I saw him. He was a witness.

Q. In what capacity?

A. He was district representative United Mine Workers.

Q. When did the strike actually commence?

A. About six o'clock, January 9, 1953, in the afternoon.

Q. Tell what happened.

A. I was not at the mine at the time. I had been to Winston-Salem. I was notified about the strike when I got back to Raleigh with Mr. Sweet. He and I left at once and went to the mine. I imagine I got there about nine o'clock that night, or some such matter. There was a commotion at the gates, a great many people there. I stayed there until twelve or one o'clock that night and went back home. I was back there every day from then until the strike ended. That first four or five days there was a great deal of disorder, a great deal of crowding in the public roads and trouble and riotous attitude on the part of the people assembled at the gates. I saw a lot of people there I had never seen before, didn't recognize their faces as having been in our employ. Don't know where they came from. The situation was so bad we applied to the state court for protection and Judge Clawson Williams issued injunction.

Q. Mr. Long, I believe when we recessed for lunch you were testifying about actual violence or disorder on the picket line during the strike and had testified that people were milling about and you had difficulty in getting in the gates. Do you recall any specific acts of violence involving certain people?

OBJECTION BY DEFENDANT OVERRULED.

Q. Do you mean that I saw?

(P. 34)

Q. Yes.

A. It would be violence to myself. I was going out to the mine the day after the strike, on the 10th, back from Henderson, and had Mr. Sweet with me and numbers of people were along the side of the road and cars parked on one side of the road. I stopped there and a man I didn't know standing

side of the road with a group of other people. I said, "I wish you wouldn't park your car in the road on the concrete." He said, "You can get by. Go on up the hill." I said, "I would like for the roads to be kept open." He invited me to get out of the car and bring Mr. Sweet with me. He said, "Get out and bring that young man with you and I will show you what I will do about it." I told him I thought they ought to leave the roads clear and I drove on up the hill. I didn't get out of the car.

THE COURT: Your property on both sides of the road?

A. Yes, sir. Hard surface road.

BY MR. FULLER:

Q. You know of any other instance when they blocked the highway that you saw yourself?

A. No.

Q. Did you at any time during the period of the strike see picket lines in and about your premises?

A. Yes, saw them continuously.

Q. At which gate?

A. Both gates.

(P. 35)

Q. So far as you know were they maintained regularly day and night?

A. I think they were.

THE COURT: Gates entering your property?

A. Yes, sir.

Q. Where the work is done?

A. Yes, sir.

Q. Property on both sides of the road?

A. Yes, sir. Turn one side to go in the gate where the mill and shaft is, the other side of the road no fence

but woods. Two gates. One at the feed shaft and the other gate at the main shaft.

BY MR. FULLER:

Q. On account of the strike what was your company compelled to do to help protect your property and maintain order?

OBJECTION BY DEFENDANT.

Q. What did your company do?

OBJECTION BY DEFENDANT OVERRULED.

A. We asked the Sheriff of Vance County to give us protection and to appoint additional deputies. We went to the Superior Court and asked the court to grant injunction to restrain the violence and give some semblance of order. We called on the Governor and asked to get state highway patrol to see that the highway was kept open. We employed a number of guards and they were deputized by the Sheriff to protect people going and coming through our gates.

(P. 36)

THE COURT: Did you cease operating?

A. We never ceased to operate fully. We didn't do any mining. We ran the pumps, kept the mine pumped out but no ore came from underground for a period of a week. We ran the mill as best we could with overseers and men who came through the gates but we lost on the whole about ten days' production.

Q. During the strike did you see any statements or reportings through public newspaper not issued by the management?

A. Yes, sir.

Q. You didn't see the statement that appeared in the Henderson paper before it was published?

A. No.

Q. Do you know who purported to sign it as reported in the paper?

A. Mr. Holloman.

Q. Did he designate who he was?

A. He signed it as president of Local District 50 Mine Workers.

OBJECTION BY DEFENDANT OVERRULED.

THE COURT: Later on if it is not brought home to the defendant I will strike it all out and the case will fall.

BY MR. FULLER:

Q. In addition to reports in local and state newspapers was there any other particular act or dissemination about the strike (P. 37) and its purpose?

OBJECTION BY DEFENDANT OVERRULED.

A. There were signs and broadcasts.

Q. Did you hear them?

A. I don't recall.

Q. Now, Mr. Long, I believe during the strike you testified that certain signs were shown and exhibited. Did you see any of those signs?

A. Yes, sir, I saw them on numerous occasions.

Q. Where did you see them?

A. In the hands of the pickets and on the cars and near our gates, and at strike headquarters near Townsville.

Q. Recognize any of the strikers carrying signs?

A. No, I don't know that I did.

Q. Recognize them as employees of your company?

A. No.

Q. Look at this picture and look at the sign and see if that is similar to signs you saw carried by strikers?

A. Yes, sir.

Q. What does it say?

A. "On strike. Company unfair to workers District 50. District 50 UMWA".

Q. That is a picture of one of your shafts.

OBJECTION BY DEFENDANT TO ALL PICTURES UNLESS HE CAN IDENTIFY THEM. THE OBJECTION IS OVERRULED.

(P. 38)

THE COURT: What do you know about the taking of this picture?

A. I asked Mr. Sweet to have the photographer in Henderson to go and take the pictures.

Q. You know these men standing at the car?

A. I don't know them but know their faces as people who have worked with us. I couldn't identify individuals.

Q. You don't know whether they were on strike or not?

A. Personally I don't know but they are wearing strike signs and standing in front of the gate. I would say they were on strike.

Q. Where is the gate on this picture?

A. It would be off to the right. The injunction required them to move back from the gate. At first they would crowd right up to the gate. Judge Williams' in-

junction moved them off and limited them to six in number.

BY MR. FULLER:

Q. This shows five men, three bearing signs?

A. Yes, sir.

Q. What does this sign on the left say?

A. "On strike for recognition, better wages and conditions of employment. District 50 United Mine Workers of America".

Q. The one next to it?

A. Practically the same thing.

Q. The other says "On strike"?

A. Yes, sir.

(P. 39)

Q. On this does that sign show practically the same thing?

A. Yes.

Q. What does this show?

A. "On strike. Company unfair to workers. District 60 UMWA".

OBJECTION BY DEFENDANT UNTIL IT IS PROPERLY IDENTIFIED AS BEING TAKEN AND BY WHOM AND WHEN: THE OBJECTION IS OVERRULED.

Q. What does this show?

A. Group of men standing in front of a store, which store is just outside of Townsville.

Q. Where is Townsville in reference to the mine?

A. About three miles from the mine. Standing under sign which says, "District 50 UMWA Headquarters". I saw that sign every time I was there.

Q. You have no knowledge as to who rented that store?

A. No, sir.

THE COURT: How many employees quit work?

A. We had 402 when the strike occurred. When order was restored 156 returned. How many were on strike or how many were scared to come I don't know. In my opinion a great many were afraid to come like this 156. I know that hundreds have told me since then that they were afraid—

MOTION BY DEFENDANT TO STRIKE. THE MOTION IS ALLOWED.

BY MR. FULLER:

Q. There were some questions this morning of the witness who preceded you about checkoffs. How many people had signed assignment (P. 40) of wages, gravel or stone workers? Do you recollect about the number of those authorizations you had just preceding and during the strike?

A. Yes.

Q. How many?

A. My recollection 258 checkoffs, written statements signed by employees of ours that they were members of the Stone Workers Union.

Q. Had they signed voluntary dues assignment?

A. Yes.

Q. What was the condition at the time of the strike and during the strike?

A. Written statement.

Q. When did it first come to your attention that another union had come down and claimed to be the proper bargaining unit?

A. Sometime in October is my recollection.

Q. October, 1952?

A. Yes, sir.

Q. Tell the Court how you found out about it and what was said to you?

A. Mr. Sweet told me he had heard that there was rumor going around—

Q. Mr. Sweet was your general manager?

A. Yes. Heard it rumored that District 50 was going to organize the men. Next thing I knew I was in Washington, he told me Mr. Fohl, Mr. Shuey and Wood had been to see him and told him they represented (P. 41) the majority of our workers and they wanted to talk about wages and hours and a contract. I came home the next day and he had a letter from Mr. Fohl confirming it which he handed me and we discussed it and prepared jointly, answer we made to that letter.

Q. How was nat letter signed?

A. By Mr. Fohl, Regional Director District 50 UMW.

Q. You did have correspondence and sometime in January the strike started?

A. Yes, sir.

Q. When did it start?

A. January 9 at the six o'clock shift.

Q. 1953. Did you check your records to see if District 50 did represent a majority of your employees?

OBJECTION BY DEFENDANT.

Q. Did you try to find out whether District 50 actually represented the majority?

A. Yes, sir. When Mr. Sweet called me in Washington and told me of the visit I asked him how many people we still

had on file with written statements they were workers with Stone Workers Union. He said he had no notice of anybody withdrawing.

THE COURT: Was the number of your checkoff more than half of the employees?

A. It was more than two-thirds. Membership had been running about three-fourths of our people. Say four hundred eligible about three hundred belonged to the union. Of them (P. 42) almost all of them signed these statements to us authorizing us to deduct their dues.

THE COURT: You didn't check off with respect to any employee unless you had written statement?

A. He had the right to withdraw that statement any time he chose. At the time Mr. Fohl made this statement that they represented the majority of our workers we had on file written statements from two-thirds of our employees saying they were members of Stone Workers Union and authorizing us to deduct from their payroll and remit every month.

Q. How much was it every month?

A. Month of December $560.00.

Q. How much for the employee?

A. $2.00 each month.

BY MR. FULLER:

Q. Was there so far as you know any attempt or move made for the de-classification of Stone Workers?

A. None that we ever heard of.

Q. De-certification. This morning there was examination of the witness who preceded you with reference to a visit to New York. Will you tell His Honor about that? First, why you went there, who was there and what you did and where you did it?

A. After we received word either by letter or verbally, I have forgotten which, Mr. Foreman had been appointed administrator of Stone Workers Union, I made inquiry to find out what that meant, (P. 43) what our duty was under such circumstances. I called Mr. Scott, President of the Union. I said, "I never heard of an administrator of a union. Do you have power to do that? Do we deal with this administrator? What is the legal situation about it? I want to know. I don't know Foreman." He said, "He is our representative. It is perfectly legal". I said, "I would like to hear from your legal department on that so I can be satisfied." He said he had a lawyer in Boston and he would have this Boston lawyer come to see me. I said, "I have to go to New York to our annual meetings", we have three companies and had our meetings up there which takes several days. He said, "If you are going to New York it would save a lot of trouble for I can get my man to meet you there instead of coming here". He said he would arrange that. I was staying with my wife at the Astor Hotel. Mr. Sweet came up and I told him Mr. Scott had made arrangements for me to see this lawyer and I would like for him to be present, so they came to my apartment at the Astor Hotel, Mr. Sweet and I for the Company, Mr. Scott, Mr. Foreman and this Boston lawyer for the union. We had a conference which had entirely to do with the legality of the appointment of Mr. Foreman to represent this union and his power to negotiate negotiations with me. He showed me the constitution of the union and told me it was a thing done quite frequently and nothing unusual about it. I talked to the management of the Labor Board in person and they told me should deal with him. Also ...d with Winston-Salem office of the National Labor Relations (P. 44) Board. They told me the same thing. In the meeting in New York the one thing discussed was the question of legality of the appointment of this man as administrator and what we were to do about it. We then made engagement to return to North Carolina and there talk about details of the contract and negotiations and there was in the meetings with us the president of the local union and Stone

Workers, Frank Swan, Martin, a colored man, foreman in the mill, and Pittman. They were asking 15 cents increase. We compromised on twelve and a half cents subject to the stabilization board. That was all that was done in the meeting in New York as I recall. That was the purpose of the meeting, to save expense of bringing his Boston lawyer to North Carolina.

Q. Who was Pittman?

A. One of our employees at the mine.

Q. Representing Stone Workers?

A. Yes, sir.

Q. I ask you if since 1946 you have continuously dealt with Stone Workers as certified bargaining agency with no interruption down to today?

A. That is true.

Q. They are still certified agents?

A. Yes, sir. I would like to make this statement if permissible—

OBJECTION BY DEFENDANT OVERRULED.

On cross examination of Mr. Scott he was asked if he was a tool of the company. We have had a great many negotiations in which (P. 45) Mr. Scott was present and others when he was not there. Our negotiations lasted over long periods of time. In many instances, the year before this, it looked like we were going to have a strike on their account. Had to get mediators, federal and state. They would insist on wages impossible to grant. The result was compromise but there have been constantly and consistently real negotiations and no rubber stamps.

(Page 45)

Q. You said a moment ago you had some difficulty in dealing with Stone Workers. Is that correct?

A. Yes, sir, had a lot of stormy negotiations with them.

Q. To such a point a crisis arose?

A. Yes, we had a mediator.

Q. How many times they ever appointed an administrator?

A. Only once.

Q. That was when Stone Workers were dead and administrator appointed?

A. No, sir. I talked to the President and he said only twenty out of two hundred and seventy-six that wanted to join District 50 and they kept up such a ruckas they had to ap. oint an administrator.

Q. Why didn't you apply for appointment of a mediator?

(P. 46)

A. Didn't need one then.

Q. Who appointed Mr. Foreman?

A. I didn't have anything to do with it.

Q. Did you have a mediator appointed to determine whether Stone Workers or United Mine Workers had authority?

A. More than two-thirds of our employees were members of Stone Workers. I didn't think we needed any other evidence.

(Page 54)

A. You knew a good many of your workers by name?

A. Yes, sir.

Q. Did you contact any of them and ask them if they wanted to have an election?

A. I talked to Mr. Frank Swan, President.

Q. He was the man to help you decide how much you would pay them?

A. He was the president and had been a good while. I asked him how many he thought wanted to change. He said twenty he thought and not more than twenty-five.

Q. Did you go out and have a survey made?

A. I didn't but we talked to our people all the time.

(Page 62)

C. R. WILLIAMS, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FULLER:

Q. What is your name?

A. C. R. Williams.

Q. Your duties?

A. Member of the State Highway Patrol.

Q. With the rank of captain?

A. Yes, sir.

Q. I believe in January, 1953 when we had the hearing in this court in which you testified you were then a lieutenant?

A. Yes, sir.

Q. In the course of your duties did you have occasion to visit the premises of Tungsten Mining Corporation around January 9, 1953?

A. No, Sir. I was ordered there January 13, 1953.

Q. What was the purpose of your going there?

A. I was ordered to the mine for the purpose of maintaining order on the highways near the mine.

Q. Were you accompanied by any other officer?

A. Yes, sir, Captain Lewis went with me and later Corporal Rawles and Sergeant Cook joined us.

Q. Will you tell the Court what you saw and what you did when (P. 63) you got to the mine?

OBJECTION BY DEFENDANT OVERRULED.

A. I arrived at the mine about six P. M. on the 13 of January. There was a crowd of men at the main gate of the mine, about thirty or forty men. I just talked with those men briefly and then went inside the office and talked with Mr. Bailey,

THE COURT: Was that in the evening?

A. Yes, sir, six P. M.

for the purpose of getting orientated. Then I went back to the main gate and talked with the pickets some more and assured them that we were neutral and were there to maintain order and to keep the highways open. At about seven-thirty I met Mr. Wood and Mr. Robinson at the gate. They were represented to us as representatives of the union.

(P. 63)

Q. Was that Mr. Lucian L. Wood?

A. Yes, sir.

Q. He is in court now?

(P. 64)

A. Yes, sir.

Q. Anybody with him?

A. A Mr. Robinson with him.

Q. What did you and Mr. Wood and Mr. Robinson do after you met them?

A. I invited Mr. Wood and Mr. Robinson to come into Henderson and have a meal with us. It was pretty late and we hadn't had anything to eat. They said they had had their meal but would come with us and have coffee. We did and went to a restaurant on Highway No. 1 North of Henderson. During the course of that meal we discussed the strike. Mr. Wood gave me his card and at first he told me he represented United Mine Workers, District 50. I was not familiar with the setup and I asked him to explain what significance that had and he explained to me, I don't recall now just what he said, it was more or less antonomastic and more or less United Mine Workers but had its own office, and so forth. I told him our mission was to keep the highways open, that we were going to be neutral and asked his support and he and Mr. Robinson pledged their support. After that we went back to the mine.

THE COURT: Is Mr. Wood in court?

A. Yes, sir.

Q. How about Mr. Robinson?

A. I haven't seen him.

THE COURT: Would it be possible to have an agreement or stipulation who they were at that time?

(P. 65)

MR. ARENDELL: Yes, sir. We will admit they are representatives of District 50. Both are in court.

MR. FULLER: Will you make the same admission as to Mr. Fohl?

MR. MAUPIN: No, sir.

THE COURT: I don't want to press it but it seems to me it would be orderly and proper. There is no point in not having the agreement but you gentlemen do what you wish.

MR. ARENDELL: We say Mr. Wood and Mr. Robinson represent District 50 and went with this gentleman to supper but we don't admit they had anything to do with the strike.

THE COURT: I am not suggesting that. I just asked was there an agreement that they were representatives of the Mine Workers District 50 and you admit that without admitting that they represented the pickets or had anything to do with what was going on at the mill.

BY MR. FULLER:

Q. Mr. Williams, when you first saw Mr. Wood and Mr. Mr. Robinson where were they and who were they with?

A. They were at the main gate of the tungsten mine on the evening of January 13, 1938 in the crowd of pickets at the main gate.

(P. 66)

Q. Did you see any violence or hear any threats at the picket line later on or at the highway later on that day?

OBJECTION BY DEFENDANT OVERRULED.

A. Yes, sir. At 11:40 P.M. on the night of the 13th, two cars, the first one containing one white man—

THE COURT: You went with Mr. Wood and Mr. Robinson to have supper?

A. Yes, sir and then went back.

Q. They met you at the cafe and they left alone and you and your associate went back to the mine?

A. Yes, sir.

BY MR. FULLER:

Q. You know where Mr. Wood and Mr. Robinson went when they left the cafe?

A. No, sir.

Q. Didn't see them any more that night?

A. Yes, sir, I saw them some more.

Q. When did you next see them and where?

A. These notes were made that night. (Witness holding in his hand some paper). At 11:40 P.M. two cars came out. One car contained one white man.

Q. Came out of where?

A. The main gate of the mine. The second car had five colored men in it. The pickets at the main gate asked us to hold those two cars up so they could talk with those people in the cars. Said (P. 67) they didn't want to hurt them but just to talk with them. We refused to do that. We left the main gate and escorted those two cars into Henderson. We turned the first car over to the Henderson police, which contained only the white man for escort. We escorted the second car, containing five Negroes, and ended up in Macon. We stopped at another place or two but en route we needed some gas and stopped at highway patrol station to gas up. While stopped there the cars with men who had fallen in behind us as we left the mine stopped at that highway patrol station also. While we were gassing up some of them attempted to talk with the five occupants of the car who had the windows cranked up. They knocked on the windows. A couple of them suggested turning the car over.

OBJECTION BY DEFENDANT.

MR. ARENDELL: Mr. Wood or Mr. Robinson were not there as we know of. It was away from the mine.

THE COURT: It is a part of the case so-far as I see. If plaintiff can bring it home to the defendant it becomes a vital proof in the case.

THE ABOVE OBJECTION IS OVERRULED.

(Answer continued) A short distance after we left the patrol station one of the cars in the line trailing us squeezed out of line and forced highway patrol car almost off of the road. The patrol car that was forced off of the road subsequently stopped that car. We arrived in Warrenton and put out some of the passengers and then proceeded on to Macon where we let the others go. That (P. 68) ends that night and that escort.

THE COURT: Did you hear any conversation between these parties, the ones that you say were following and the ones being escorted?

A. Yes, sir. When we stopped to gas up the people following us stopped there too and they wanted to talk with these occupants of the cars and did talk with them. For instance, one of them said to the people in the car, "How did your windshield get broke?", and laughed, "Ha-ha!"

Q. Was it broken?

A. Yes, sir, and some were cursing and daring them to get out. Others in the group were talking to them in a civil sort of way and trying to persuade them not to go back to work. It was a mixture of emotion. Some were belligerent and some were reasonable.

BY MR. FULLER:

Q. Do you recall being at the mine premises January 14, the next day?

A. Yes, sir.

Q. About what time of day or night was that?

A. I was there just about all the time. I slept very little and stayed at the mine most of the time.

Q. Did you see Mr. Wood there?

A. Yes, sir. I saw Mr. Wood there at about 7:45 P.M. There were about thirty pickets having a fish fry when I arrived about 7:45 (P. 69) on the evening of January 14, and a deputy sheriff was at that time serving a restraining order. He fastened a copy on a fence near the main gate. At about 8:15 Mr. Wood arrived at the scene and was shown the restraining order.

Q. Who showed it to him?

A. I am not quite clear on that at this time. I know a few minutes later he came on the public address system attached to an automobile and made a talk and he read the restraining order.

Q. Just before reading that did he identify himself over the public address system?

A. I made notations as he was talking. I have them here as I made them that night. That was 11:45 when he began talking and arrived there at 8:15 but didn't start his speech on the public address system until 11:45.

Q. Did he introduce himself?

A. Yes, sir, he identified himself.

Q. How?

A. I couldn't give it verbatim. He said "This is Lucian Wood" and gave his connection. He was representative of District 50. He said, "This afternoon Judge Clawson Williams issued restraining order against District 50 and others." I have a copy of the restraining order which I had then, and I followed him as he went down the various items. He read sections one and two and then commented, "A bunch of malarky. We are

not going to hurt people. We are going to be damn lucky to ride the highway". He read that (P. 70) third section without comment and then the fourth and said, "We are going to have six pickets here at the main gate and six pickets at Snead."

THE COURT: The restraining order limited the pickets to six at each gate?

A. Yes, sir.

BY MR. FULLER:

Q. He was proposing to comply with the order?

A. Yes, sir. He said, "After the contract expires at midnight tonight you have no contract. After this it is District 50. There will be no pickets and no signs down the road where we have been." That was granting my request. About three hundred yards down the road was a group of pickets with fire on their shoulders and I requested Mr. Wood to have it discontinued. This was in compliance with our request: He said, "There will be no pickets and signs down the road where we have been. You will have to pass the word on that only six pickets allowed." Then he explained the pickets no closer than a hundred feet and stated the time and place they would have to answer to cause to the restraining order. He told the men to go along with the orders until the young man got to this language, "We are going to obey this thing to the letter. If any threatening or abusive action towards you men we will take legal action. I think some of you boys will be allowed to walk the highway. I think you should be allowed to walk the highways. I think you have the right to drive your car. We will move that (P. 71) picket sign down through this hole. We will have to be on the lookout for men coming in on assignment and send some of them back." Then he discussed having more than six men at the change of shift until they got organized. He then advised the audience they would continue the practice of holding meetings; cautioning the men to leave only six pickets.

THE COURT: You say he referred to something as a lot of malarky?

A. Yes, sir, items one and two.

Q. He was not referring to the order of the Court but was saying they had not been doing what was set forth as prohibitory?

A. That was the inference I got. Item one was interfering in any manner from free ingress and egress, Item two from assaulting and so forth.

BY MR. FULLER:

Q. Did Mr. Wood make any statement in your hearing as to who was conducting the strike?

A. He said "After midnight you have no contract. From then on it is District 50." That is the only specific thing I recall that he said.

Q. When was the first time you saw the picket signs that had on them "District 50, United Mine Workers"?

A. I am vague about that. I would be guessing.

Q. Was it around the 15th?

(P. 72)

OBJECTION BY DEFENDANT OVERRULED.

A. I would say in my opinion they appeared about the same time the public address system was to be on. The signs came on the scene, as I recall, the night of the 14th. In fact Mr. Wood told me he would have the pickets remove the signs down at the picket line they had on the highway about three hundred yards from the main gate. That was at my request but what was on those signs I don't know.

Q. Did you see any button, "I am a Union Member of District 50. Are you a member?"

A. Yes, sir.

Q. Where did you see those?

A. All the pickets practically were wearing them.

Q. You didn't see them distributed?

A. No, I didn't.

Q. Did you have any other discussion with Mr. Wood regarding meetings?

A. He asked me about a meeting at the ball park, if it would be permissible. I told him that was off of the highway and it was none of my affair.

Q. Did you make any arrest of the employees or strikers?

A. I arrested one Fred Scott for assault, hit and run.

Q. Did he make bail?

A. His bail was set at a very high figure by the justice of the peace, Mr. Finch. I believe it was a thousand dollars. Anyway a (P. 73) pretty high figure. Mr. Foll, Mr. Robinson and Mr. Wood came to our office and asked could I assist them in getting that bond reduced. I called Mr. Finch and suggested that the bond was a little out of line. I didn't say it in those words. I had to be careful about judicial matters but I did get it reduced to five hundred.

THE COURT: You mean you were diplomatic?

A. I didn't want to get in hot water.

(Page 73)

JAMES R. SWEET, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FULLER:

Q. Your name?

A. James R. Sweet.

Q. Where do you live?

(P. 74)

A. Henderson, North Carolina.

Q. Your business?

A. General Manager and Vice President Tungsten Mining Corporation.

Q. Was that your position at the time of the strike?

A. Yes, sir.

Q. And that was your position in January 1953 and has been ever since?

A. Yes, sir.

Q. How long you been with the company?

A. Since October, 1948.

Q. Do you recall a visit to your office the 16 of October, 1952 from some people who said they were representatives of District 50?

A. Yes, sir.

Q. Who were they?

A. Mr. Robert R. Fohl, Mr. Walter H. Shuey and Lucian Lincoln Wood.

Q. Is Mr. Shuey here?

A. I don't know whether that is Mr. Shuey with the glasses on or not.

BY MR. GREEN: He is here.

Q. When did they come to see you?

A. October 16, at Noon time. They came to my office and asked to see me there.

Q. Tell the Court what you said and what they said.

A. When I was advised that they were in the lobby of the building—

Q. Where was this?

(P. 75)

A. At the mine office of Tungsten Mining Corporation. I went out in the lobby and introduced myself. Mr. Fohl introduced himself as being representative of District 50, Mine Workers Regional Director, and introduced me to Mr. Wood and to Mr. Shuey. Mr. Fohl told me that was a courtesy visit.

Q. Tell you who Mr. Wood and Mr. Shuey were?

A. Later he told me Mr. Shuey was representative of District 50, United Mine Workers, and that he was resident in either Virginia or West Virginia, and Mr. Lucian Lincoln Wood was introduced in my office as being representative of District 50, United Mine Workers, and resident of Raleigh, North Carolina. After being in my office Mr. Fohl handed me his card and told me a majority of our employees had signed up with the union, District 50, and went on to explain that District 50 represented the employees of a number of other plants in North Carolina and outside of the state, one plant I remember being a chemical plant in Virginia. Mr. Fohl explained further that they got along well with these companies and employees. He said he wouldn't use the facilities of the National Labor Relations Board but we could use federal mediator or North Carolina Stabilization Labor Conciliator but under no circumstances would use the facilities of the National Labor Relations Board. He stated that they were not always successful in obtaining rights to represent employees of an organization but that they would resort to strike if necessary. As I recall he concluded the interview by stating under no condition would he use the facilities of the (P. 76) National Labor Relations Board.

Q. You say Mr. Fohl gave you a card. Do you recall what that card had on it?

A. Yes; it was a business card indicating he was a representative of District 50, United Mine Workers.

Q. Have his name on it?

A. Yes, sir.

Q. Then that was the end of that meeting.

A. Yes, sir.

Q. Did he tell you why he didn't want to use the facilities of the National Labor Relations Board?

A. No he didn't.

THE COURT: You knew?

A. Yes, sir. I had a very good idea.

BY MR. FULLER:

Q. At the time of this conference you have just testified to do your records indicate who represented a majority of the employees as bargaining union?

A. Yes, sir.

Q. Who was that?

A. Stone Workers.

Q. What records do you refer to?

A. Checkoff authorization of the employees. Members of the union pay their dues to the union through the company.

Q. Could the signers of those cards revoke them any time they (P. 77) wanted to?

A. Yes, sir.

Q. Are they compelled to sign them?

A. No, sir.

Q. It was a free and voluntary action?

A. Yes, sir.

THE COURT: You remember how many you had on the checkoff list at that time?

A. Not exactly. Probably two hundred and fifty or seventy.

Q. Out of how many employees?

A. Slightly less than four hundred. I have in mind around seventy percent of the membership that could have union membership.

Q. Had any of those employees who had signed the checkoff been to you and made statement about desiring to withdraw their authorization?

Q. And had there been any withdrawal just before the strike occurred?

A. There are a number of withdrawals made, five over a period of a month or two months.

Q. That is preceding the visit of Mr. Fohl and his associates?

A. About that time.

Q. Did you go into any explanation to him when he said you (P. 78) could resort to a mediator? Did you give him explanation why you were not willing to do that or why you thought it was unnecessary to do it?

A. No. He initially stated it was a courtesy visit and when he said his union represented a majority of the employees I didn't believe that. That was the basis for thinking on my part no discussion was needed.

Q. You thought he was poorly informed about it?

A. I figured he was wrongly informed.

BY MR. FULLER:

Q. I hand you a letter and ask you who it is from?

A. Letter dated October 17, 1952 from Robert R. Fohl, Director Regional 19 to myself.

Q. That was received and read by you?

A. Yes, sir.

Plaintiff introduces in evidence letter dated October 17, 1952, from Robert R. Fohl to Mr. J. R. Sweet, marked "P-8".

Q. I hand you a paper and ask you to tell me what that is?

A. Copy of letter written October 21, 1952 by myself addressed to Mr. Robert R. Fohl.

Plaintiff introduces in evidence copy of letter dated October 21, 1952, addressed to Mr. Robert R. Fohl from Tungsten Mining Corporation, signed by Mr. Jas. R. Sweet, Vice-President and General Manager, and marked "P-9".

Q. I hand you a paper. What is that?

(P. 79)

A. Notice signed by W. L. Long and myself published at the mine October 21, 1952. Notice addressed to our employees in respect to District 50 and their request for a conference. This was posted at the mine and also was given out with all the checks issued to the employees. We have a number of bulletin boards at each gate to the mine and posted on that.

Plaintiff introduces in evidence notice signed by W. L. Long and J. R. Sweet, dated October 21, 1952 and marked "P-10".

Q. Mr. Sweet, I hand you another sheet of paper and ask you to identify it.

A. This is second notice signed by W. Lunsford Long and myself, statement of company policy dated October 27, 1952.

Plaintiff introduces in evidence notice signed by W. Lunsford Long and J. R. Sweet, dated October 27, 1952, and marked "P-11".

Q. I hand you another paper and ask you to identify that.

A. This is a copy of a notice signed by J. B. Foreman, Administrator for Tungsten Local 98, addressed to fellow workers, dated December 19, 1952, by which he sets forth the major changes subject to the approval of the wage stabilization board.

Plaintiff introduces in evidence copy of notice signed by J. B. Foreman, Administrator for Tungsten Local 98, addressed to "Fellow Workers", dated December 19, 1952, and same is marked "P-12".

(P. 80).

Q. What is this paper?

A. This is job classification, wage rates, showing rates prior to the wage increase granted on December 18, 1952, and proposed rate which would be effective January 15, 1953 subject to the approval of the wage stabilization board, dated December 18, 1952.

Q. Was this brought to the attention of the mine employees?

A. That was posted on the mine bulletin boards on December 18.

The plaintiff introduces in evidence job classification, wage rates, etc., dated December 18, 1952, marked "P-13".

Q. I hand you two sheets of paper to which is attached memorandum and ask you to identify those.

A. Letter addressed to National Labor Relations Board, Washington, dated October 30, 1950, written by Robert R. Fohl, Director of Number 19. We received a copy of this at the mine.

Plaintiff introduces in evidence copy of letter to National Labor Relations Board signed by Robert R. Fohl, Director of No. 19, dated October 30, 1950, marked "P-14".

Q. THE COURT: Mr. Fohl, when he wrote that letter, sent you a copy?

A. Yes, sir.

Q. The copy introduced is that copy?

A. Yes, sir.

BY MR. FULLER.

Q. I hand you another two pieces of paper and ask what that is.

A. Letter written by Robert R. Fohl, Director Region 19, dated (P. 81) October 22, 1952, written to myself.

Plaintiff introduces in evidence letter from Robert R. Fohl to J. R. Sweet, dated October 22, 1952, marked "P-15".

Q. You did have a meeting, as the notice showed, and wage increase granted. Who met at the mine when they negotiated the new wage contract? Who was present?

A. For the company Mr. Long, Mr. Bailey and myself. For the union Mr. Foreman and Clem Martin, a boy from the mill, and Frank Swan, President of the union.

Q. Where did those negotiations take place?

A. In Mr. Long's office at the mine.

Q. How much time did they consume?

A. Just how much time on the 17th—we generally met at ten A.M. Whether we met that day at that time I don't recall, but we met on the 17th and on the 18th we came to an agreement.

Q. Who entered into the discussion?

A. Everybody present.

Q. Then it was a general discussion of the terms and conditions?

A. Yes, sir.

Q. On the dates that those negotiations were held what did your checkoff card show with respect to the Stone Workers Union?

A. It would show that a majority of the employees of the mine were members of the United Stone and Allied Products Workers of America.

Q. Can you give us approximately the number of checkoff cards you had on the day in question?

(P. 82)

A. About 260. About seventy percent.

Q. Mr. Sweet, after the strike began on the 9 of January, 1953 did you see the signs that were up at the picket line and other places?

A. Yes.

Q. What did they say?

A. First sign I saw said, "On Strike", as I recall, and that is all it did say.

OBJECTION BY DEFENDANT OVERRULED

Q. Did you see the photographs presented to the Court yesterday?

A. Yes, sir.

Q. Did they correctly represent signs the picket lines and carried by picketers?

A. Yes, sir.

Q. When were the signs carried by the picketers?

A. Signs carried by the pickets as I recall from the 10th, —I don't remember seeing any on the 9th,—from then on until January 30 I believe.

MR. GREEN: We object to any evidence relative to those pictures unless they can be identified as to time and the person making such pictures, and we ask that the evidence relative to the pictures be stricken unless they can designate the time that the pictures were taken. We think the time is a very important element.

THE COURT: Those photographs are being offered and only (P. 83) considered by the Court to enable the Court to understand what he is talking about. He says those photographs represent what he saw there practically every day from the 10th to the 30th.

THE WITNESS: With the exception on the 15th that sign showed only "On Strike".

BY MR. FULLER:

Q. After the contract of December 18 did they continue grievances for their members?

A. Yes, sir.

Q. Do you recall the instances?

A. Junius Robinson January 6 heard by the grievance committee which never came up to me. The president of the union was there, mine foreman was there, and mine superintendent was there and also Mr. Bailey I believe.

Q. Did all such grievances come up to you?

A. No, very few came up to me.

Q. I hand you several sheets of paper and ask you to identify them if you can.

A. Tabulation showing list of employees, during the period October 17, 1952 to January 9, 1953 It gave the name of

the employees, checkoff authorization for four different days, October 8, 1952, December 1, 1952, December 18, 1952 and January 9, 1953. Also the number of employees as of that time.

Q. Checkoff authorizations for what?

(P. 84)

A. Union dues to the Stone Workers. It is tabulated on the last sheet.

THE COURT: What does it show the total to be, total of members and total of employees?

A. October 18, 1952 checkoff authorizations 276 and employees were 388. On December 1, 1952 checkoff authorizations 265 and employees 402; December 18, 1952 checkoff authorizations 258, employees 402; January 9, 1953 checkoff authorizations 246 and 406 employees.

Q. Between the last two dates there was a withdrawal of certain number of employees.

A. October 18, 1952 276 against 230, and 258 and 246.

Q. Do you recall what those withdrawals were for?

A. Could be individual leaving the operation and automatically cancelled. I think in one case employee promoted from miner to shaft boss.

Q. Is there a case of an employee withdrawing authorization for the reason he no longer belonged to the union?

A. No, sir, not to my knowledge. I think not.

Plaintiff introduces in evidence:

Tabulation of list of employees and checkoff authorizations during period October 17, 1952 to January 9, 1953, marked "P-16".

OBJECTION BY DEFENDANT OVERRULED.

Q. I hand you another paper and ask you to identify that.

A. This is a press release dated January 10, 1953, signed by Cor- (P. 85) dell Holloman.

Q. Have you see Mr. Holloman's signature?

A. Yes, sir.

Q. Is that his signature?

A. Yes, sir.

Q. Are you familiar with the handwriting of Mr. Fohl?

A. Yes.

Q. Is that press release written in his handwriting?

A. In my opinion it is.

Plaintiff offers in evidence press release signed by Cordell Holloman, marked "P-17".

Q. Mr. Sweet, did that statement later appear in the public press?

A. Yes, Henderson Daily Dispatch, January 12, 1953.

Q. I hand you these papers and ask you to identify them.

A. The contents of that letter sets up what is in this paper.

Q. What is that paper?

A. Henderson Daily Dispatch, January 12, 1953.

Q. And the statement is in full?

A. Yes, sir.

Q. On what page?

A. Page four.

Plaintiff offers in evidence copy of Henderson Daily Dispatch, dated January 12, 1953, specifically the article

on page four beginning "Tungsten Mine is on Strike", said article being marked "P-18".

(P. 86)

Q. Mr. Sweet, for those periods you testified about in that checkoff list, how much was the checkoff from each employee on each date?

A. Those were all covered by checks. Checks for authorization, $2.00.

Q. How much for each employee?

A. $2.00.

Q. Did you actually check those off and remit to the Stone Workers Union?

A. Yes, sir.

Q. Do you have the checks for that?

A. Yes, sir.

Q. Will you get them?

A. These are the checks.

Q. For the three periods you testified about?

A. Yes, sir.

Q. They are checks for each month?

A. Yes, sir.

Q. Do these cancelled checks cover the period you testified about by referring to this checkoff list?

A. Checkoff monthly.

Q. These cover the period February 11, 1952?

A. Not necessarily.

Q. What periods do they cover?

A. Check written January 9, 1953 for the preceding month.

Plaintiff introduces list of checks for checkoffs, marked "P-19".

(P. 87)

Q. What are the other checks?

A. December 12, 1952. That would cover the preceding month. November 7, 1952. That would cover for the preceding month. This one is dated October 10, 1952. That would cover for the month of September, 1952. One written out dated September 12, 1952 and that would be for the preceding month. One dated August 8, 1952 for the preceding month.

Q. Who are they payable to?

A. Stone Workers.

Q. Who is the payee?

A. Mr. R. D. Card, Secretary and Treasurer.

Q. Who is this one made payable to?

A. J. B. Foreman, Administrator Local 98.

Q. They were for the checkoff union dues for the workers?

A. Yes, sir.

Q. Did you testify what position you hold with Tungsten Mine?

A. General manager and vice president.

Q. Among your duties do you keep records of the receipts and disbursements and profits and loss and keep books for the company?

A. Those are under me. I am in charge of them.

Q. How long was the work interrupted at the mine by reason of the strike?

OBJECTION BY DEFENDANT OVERRULED.

A. From the afternoon of the strike the work was actually interrupted for several months, normal routine.

(P. 88)

Q. How long was production interrupted by reason of the strike?

A. Period of eight or nine days we didn't have any hoisting done at the mine and subsequent days when production was low.

Q. Took some time to get back to normal?

A. Yes, sir.

Q. How long?

A. Several months.

Q. Have you some figures available you could refer to and give the court information about the loss suffered by reason of the strike?

A. Yes, sir.

Q. Estimated statement of profit lost by Tungsten Mining Corporation due to the strike.

. . .

(Page 99)

Q. Mr. Sweet, on or about the 9th or 10th of January, or thereabouts, did you see Mr. Wood?

A. Yes, sir.

Q. Where was he?

A. He was with a group of employees at the entrance to gate No. 7 shaft, main entrance to the mine. I saw him when I drove into the office.

Q. Was there a picket line?

A. A large group.

Q. Were they strikers?

A. Yes, sir.

Q. What was he doing?

A. Standing among the group of employees, and when I passed by he said something to me. I don't know what it was but I expressed the opinion when I got to—

OBJECTION BY DEFENDANT SUSTAINED.

THE COURT: This strike was called for six-thirty on the 9th?

A. Yes, sir.

Q. You are talking about the following day?

A. Yes, sir.

W. L. LONG, recalled, testified as follows:

REDIRECT EXAMINATION BY MR. FULLER:

(Page 184)

It is stipulated that Mr. Robert R. Fohl is a Regional Director of United Mine Workers District 50 and was occupying such position in the month of December and January of 1952 and 1953 respectively.

It is stipulated that Mr. Walter A. Shuey was Field Representative of United Mine Workers District 50 during the month of October, 1952 through January, 1953.

(P. 185)

B. B. BAILEY, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. GHOLSON:

Q. Please state your name.

A. Benton B. Bailey.

Q. Were you employed by Tungsten Mining Corporation in January of 1953?

A. I was.

Q. In what capacity?

A. Assistant to the general manager.

Q. Calling your attention to January 13, 1953 was there a disturbance at your gate of the tungsten mine on the morning of January 13?

A. Yes, sir.

Q. State to the Court what happened.

OBJECTION BY DEFENDANT OVERRULED.

A. On the morning of January 13 there were a number of men in Oxford that desired to come to work at our plant. We had promised these men we would furnish transportation and escort them to the plant so early the morning of January 13 I drove my car and accompanied by two guards in a company car we drove to Oxford and picked up these men, I believe eight or nine in number. From Oxford we then proceeded towards the mine. In the little town of Stovall was another group of men. As I recall there were five that also desired to go to work and so I put them in the convoy with the rest of us, guard car in front, this other car between us and mine (P. 186) in the rear. We proceeded to the mine. As we approached the mine in the vicinity of No. 7 shaft a car that had been following me got in front of us and blocked off myself and the car preceding me. The guard car went on. I told the boys to stay in the car but to lock the car. I got out. By the time I got out somebody, Mr. Williamson, struck me and the fight lasted five minutes.

Q. Who was that?

A. He had been a former employee of the company.

THE COURT: The men you had in the car didn't get in the fight?

A. No, sir.

Q. What injury did you sustain?

A. I had one tooth knocked out.

Q. State whether you saw George Pendley on the picket line at that time?

A. Yes, sir.

. . .

(Page 187)

RE-DIRECT EXAMINATION OF MR. B. B. BAILEY:

Q. State whether or not during the period of the strike at Tungsten you saw Mr. Lucian Wood on the picket line.

A. I did.

Q. Know what dates that was?

A. No, sir.

Q. You are sure it was Mr. Wood?

A. Yes, sir.

Q. How many days you see him out there?

A. That I can't recall. He was pointed out to me one time.

(P. 187)

. . .

L. R. McCLELLAND, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GHOLSON:

Q. State your name.

A. Louis R. McClelland.

(P. 188)

Q. During the month of October, in the fall of 1952, and in January, 1953 were you working for Tungsten mine?

A. I was.

Q. Were you a member of Stone Workers Union at that time?

A. I was.

Q. State whether or not during the month of October, 1952 you ever attended any organizational meeting of District 50 of United Mine Workers?

A. I attended one on the ball diamond but I don't know the date.

Q. In what month?

A. Not to be sure but I say the latter part of October or the first of November.

Q. State whether or not you knew Mr. Shuey at that time?

A. I knew who they said it was.

Q. Hear Mr. Shuey make any speeches at that organizational meeting?

A. Yes, sir, heard him make a speech.

Q. What did he say?

A. He was talking to the crowd and said he might have to strike to get recognition, "If we do we will", and if he had

to he would send one and if that didn't do he would send two and if that won't enough he would send enough until it did work.

Q. Say anything about a picket line?

A. Yes, sir, said something about a picket line.

Q. Did Mr. Shuey at the time he was making the talk state who he (P. 189) was?

A. Yes, sir. Said he was Mr. Shuey and was representing District 50 of United Mine Workers.

. . . .

(P. 189)

Q. What statements were made, if any, by any of the employees after that meeting about what might happen to people attempting to get through the picket line?

A. Statement made about houses might be dynamited and things like that.

MOTION BY DEFENDANT TO STRIKE. THE MOTION IS DENIED.

Q. Did you go to the mine on January 9, 1953?

A. I did, sir.

Q. What happened there?

A. I was on the six o'clock shift and when I got to the gate—

Q. Six P.M.?

(P. 190)

A. Yes, sir. A crowd drove up and a fellow got out and told me—

OBJECTION BY DEFENDANT OVERRULED.

that we were striking. I said, "Good. Maybe we will get it over with. I have heard enough about it. I am going in and see how a majority of the men feel." I went on in and five or six of us in there. I changed clothes. Three of us walked to the front of the main office and a crowd had ganged up around the gate and told me I would either have to go to work or get out. I looked at the two fellows and said, "Are we going down?" They said, "We are afraid to." I said, "I don't feel so good about it and we better change clothes." We changed clothes and came out of the gate.

Q. Did you see James Journigan?

A. Yes, sir.

Q. Where was he?

A. Among the men standing there talking.

Q. In the picket line?

A. Yes, sir.

Q. Who is he?

A. He was an employee of Tungsten mine at that time.

Q. You say he was on the picket line?

OBJECTION BY DEFENDANT OVERRULED.

A. He was, but before the picket line was formed out there that night. He was supposed to go in on the six o'clock shift. They were talking—

OBJECTION BY DEFENDANT.

(P. 191)

Q. What did he say to you?

A. What I was getting around to, he thought—

OBJECTION BY DEFENDANT.

that Mr. Pack and Elbert Hayes and Daniel Raper came down to work. Going to catch me and Mr. Pack if going to work

and give us a whipping for going to work and the other three going to duck in the creek, Clifton, Elbert Hayes and Daniel Raper who lived in Henderson.

. . .

(P. 191)

It is admitted by defendant that the pictures in the possession of plaintiff were taken the 27 of January, 1953.

Plaintiff offers in evidence five photographs of the signs and same are marked "P-20, 21, 22, 23 and 24."

PLAINTIFF RESTS

Defendant moves for judgment of non-suit. The motion is denied.

ROBERT R. FOHL, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MAUPIN:

(Page 194)

Q. Do the checkoff cards you received from these employees state what they wanted you, that they wanted you, Mine Workers of America, to represent them as their bargaining agent?

A. It does.

Q. Are these the checkoff cards?

A. They are.

Q. How many are there?

A. It indicates here, and we have checked them, 386.

Q. Are they all signed by employees of Tungsten Mining Corporation?

OBJECTION BY PLAINTIFF.

A. I personally didn't sign them and from that standpoint I wouldn't know.

The 386 checkoff cards are marked for identification "D-4".

THE COURT: You don't know whether they were employees?

A. Yes, I firmly believe it and have no reason to doubt it.

. . . .

(Page 197)

Q. How many members did you have at that time?

OBJECTION BY PLAINTIFF.

THE COURT: All he can say is he had what he considered definite portion of the majority of workers signed up.

Q. You didn't check to see if they were workers?

A. No, sir.

Q. You don't even know that they signed?

A. Personally no. We usually ask a person who contacts us how many people working in the plant and check it against that, and from what we understand was total number of eligible people.

. . . .

(Page 206)

CROSS EXAMINATION OF MR. ROBERT R. FOHL BY MR. FULLER:

Q. You know there was violence in this strike?

A. No, I don't.

Q. Haven't you heard that homes were dynamited?

A. I have read in the paper and have heard testimony here.

Q. Didn't you go down to get bond reduced?

A. That was a traffic charge. A five thousand dollar bond put on him and I thought he was being persecuted and not prosecuted.

Q. Didn't you sign or arrange his bond, you and others?

A. It is possible.

Q. You know some people were arrested for dynamiting a power pole and dynamiting a house and tried and sent to the penitentiary?

A. I don't know the facts. Our lawyers handled it but I believe I know about the incident you are talking about but when you have a strike such as this, somebody having a traffic charge and a high bond, that these men were being persecuted and not prosecuted.

(P. 207)

Q. In the dynamiting cases didn't you sign or arrange bail?

A. It is possible.

Q. Don't you know?

A. I am not certain which ones I did or didn't but I assume if I didn't a staff man did.

Q. In every case?

A. I don't know about every case but a good majority.

Q. In all dynamiting cases didn't you or a staff man arrange bond?

A. I don't know.

Q. Don't you know they were tried in Greenville County and convicted and sent to the penitentiary in the dynamiting cases?

A. I personally don't know.

. . . .

(P. 207)

Q. Didn't Mr. Wood report these dynamiting arrests and trial and convictions to you?

A. I heard about it in some manner, or heard about some of these cases. I was not there.

Q. I ask you if Mr. Wood or some other representative of yours (P. 208) didn't report it to you and if you in return didn't have to make a report on it?

A. The lawyers usually handle it.

Q. I asked you what you did.

A. I didn't do much of anything about it. I had passed the point even where negotiating agreement was working at recognition.

Q. Didn't Mr. Wood report the dynamiting cases to you?

A. No, I don't think so.

Q. Who did?

A. Do you mean the men being tried? If the men were arrested I could have or some of the staff men could have checked the bond or made bond.

Q. I asked you if the case was not reported to you?

A. I knew of various things going on.

THE COURT: Do you remember the dynamiting cases?

A. I believe there were some of those and I had read them in the paper.

Q. Anybody report them to you and if so how?

A. I don't know.

(P. 209)

BY MR. FULLER:

Q. I believe you attended an action in this court on the 29 of January, 1953 entitled "Re Johnston, Regional Director, against Tungsten" and testified in that.

(P. 210)

A. Yes.

Q. And I ask you if you didn't testify on direct examination about receiving copy of charges and amended charges and your office received them?

A. I believe so.

Q. This is a question of the examiner, "You received a copy of the charges and amended charges in this case by registered mail?" and you answered "My office received them and I have seen them. We are not questioning them." Question: "They were received approximately a day or two after the date on the charge, January 12 on one and January 14, 1953 on the other?" Answer: "I assume approximately those dates." Then I believe Mr. Davis, on cross examination, asked you your official connection with District 50. "I am Regional Director for the greater portions of Virginia and North Carolina", and then you testified that Mr. Wood and Mr. Robertson were under your supervision as regional director. Is that correct?

A. Yes, sir.

Q. Then you were asked when from your knowledge did District 50 first become actively interested in the situation at

Tungsten, first go in there to work among the employees and you testified about what you did just now, that you were in Cincinnati and heard they wanted some help.

A. I have not reviewed that since then.

Q. Now, you testified your representatives, from time (P. 211) to time, about what they were doing, and the rest seems to be as you testified this afternoon about telling them to try to avoid trouble and look after hardship cases. Then there is some question about starting the strike and I find in the record that you testified: "Irrespective of the fact we have in no way caused the strike we did feel that with the notices we gave, personal appearance and mailed to the Company that we had an interest that we could logically and properly inject the question we were still asking, for recognition from the 15th on."

A. That is true and that is substantially what I have said now.

Q. Then the Court said: "You say you had nothing to do with the strike before the 15th but since that time District 50 has participated in the continuance of the strike?" and you answered: "We absolutely had nothing to do with the occurrence of the strike nor the cause that could settle it peaceably because we have no bargaining authority. The place we felt we could ethically inject ourselves we had made every human effort. If it could be any other way to do it I would like for somebody to suggest it."

A. If that is what is there,— and it sounds like it.

Q. The Court asked you: "You say District 50 has been continuing the strike?" "We injected the question of recognition from the 15th on. Mr. Robertson had picket signs he had had somewhere else on display. I told them I didn't think we could raise it ethically until what was the normal notice

date we had given the company". "After January 15?" "We have displayed signs." I ask you if that (P. 212) is what you said under oath at the hearing I referred to?

A. If you are reading it and if it is taken correctly.

Q. The next question was, "You established strike headquarters?" to which you answered: "With the restraining order the men had no place to go. Restricted to six pickets. We thought it decent courtesy to get a pool room or somewhere the men could congregate. Otherwise they might violate the restraining order." Question: "District 50, since January 15, has participated in the continuance of the strike?" You answered "I had representatives there knowing what was going on".

(P. 212)

THE COURT: The suit was against the picketers?

A. Yes, sir, but they named us in the restraining order.

Q. But wouldn't you say it is fair to say that after the 15th of January your organization was involved in the continuance of the strike as divorced from violence?

A. You are correct.

(P. 213)

THE COURT: . . . I think it a fair statement for you to make after the 15th your organization was participating in the strike.

A. We were participating from October. We didn't participate in calling that strike. I don't know how we——

could by our injecting ourselves continue it or not to continue it.

(P. 213)

A. Our injecting ourselves (P. 214) in that respect, prolonging the strike, we could have cut it short if somebody had worked with us.

Q. I am not intimating it is favorable or unfavorable to your position but you were in touch with the situation after the strike began?

A. Yes, sir.

Q. Did you ever at any time encourage the men to return to work?

A. I wouldn't say we encouraged them to return or not to return. We advised them not to strike. I don't think we were in position to tell those people what to do at that stage and on midnight, the 14th, we were named in the restraining order. Things came so fast I felt we had to take some action. Told Mr. Wood to obey the restraining order.

Q. You must have been in it after the 14th or 15th because your men were there on this night when the restraining order was served and your men were telling the pickets that they must obey the order and that "we" your organization intended to fully comply with the Judge's order.

A. Even before then I am sure Mr. Wood told those men to conduct themselves properly. I am sure they were looking to us for advice. I don't know how we could have failed to be there from an honorable position.

(Page 216)

Q. Did you say you wanted the strike?

A. From the standpoint of having to go in there and being accused of being involved in it our being injected into it by the people wanting us to settle for them is what I meant when I used that term.

Q. You have seen these pictures and it was in evidence that Mr. Roberson got some signs and displayed them.

A. If I recollect properly Mr. Roberson had some signs in his car.

Q. Do these photographs correctly represent them?

A. Yes. I think they represent what was there. He had them in his car.

Q. You were present in Henderson in the NLRB hearing on March 3?

A. Yes, sir.

Q. And then the hearing before this Court that I have been referring to?

A. Yes, sir.

Q. At any of those hearings was any question of these cards ever (P. 217) brought up or were they ever mentioned?

A. I have stated to Mr. Sweet and I think inferred in all of these hearings that we had proof.

Q. Were those cards or any of them ever brought up or mentioned by District 50 or anybody else in the two hearings referred to?

A. I don't think so. I am not sure. I am sure we didn't introduce them as evidence. I think we referred to the fact we had them.

Q. Don't you know this afternoon is the first time they have ever been brought in court in any hearing?

A. Might be, but not the first time we tried to use them for the evidence they were intended for.

Q. This is the first time they were brought in court?

A. I believe so.

Q. Don't you know so?

A. I can't say I know.

Q. I hand you a paper called "Press Release", plaintiff's Exhibit 17, dated January 10. Is that in your handwriting?

A. Yes, sir.

Q. I hand you what is marked plaintiff's Exhibit 8, a letter addressed to Mr. Sweet. Did you sign that?

A. Yes, sir.

Q. And I hand you plaintiff's Exhibit 15 and ask you the same question, if you wrote and signed that?

A. I wrote it except some underscoring.

(P. 218)

Q. You signed it?

A. Yes, sir.

Q. I ask you if at the Henderson hearing you didn't under oath make this statement, "We contend we inherited the strike. We didn't call it. We did engage the question of recognition after it started in the hope of getting that settled"?

THE COURT: He has already said that.

. . . .

(Page 229)

LUCIAN LINCOLN WOOD, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MAUPIN:

Q. Did you get a copy of the injunction at the gate?

A. That was the following night that the restraining order was issued. Yes, I got a copy. I asked the sheriff if he had an extra copy. I obtained it and immediately went to Henderson and called Director Fohl, told him what I had, read him parts of it I believe. I asked him what should I do about it. He told me to go back up to the mine and to call those people together and read them what the order contained and tell them that we were going to have to obey that to the letter, we had no alternative. We were going to be responsible for three hundred or more men, we were going to protect our necks, you bet that.

Q. You say you were responsible. Why?

A. The restraining order.

(P. 230)

Q. As a result of that what did you do?

A. I went back to the mine. We took out our speaker system we had used at the ball park for a month or so previous to that. I called the men together and I read to them part of the order that spelled out things they could do and things they couldn't do.

Q. What were they?

A. I don't remember. I do remember this, that the order limited the number of pickets to six at each gate. It limited the distance that they could approach the gate to a hundred feet. I had the highway patrol mark off an estimated hundred feet.

Q. That was that night?

A. Yes, sir, and I don't know, there were about eight or nine items in it.

Q. Did you point out the hundred feet to the strikers?

A. Yes, sir. I wanted them to abide by it.

(P. 230)

Q. That was the night of the 14th?

A. Yes. The restraining order issued the night of the 14th.

(P. 231)

Q. What happened after that?

A. I got back to the mine about 11:45. After going to Henderson, making a call to Mr. Fohl, coming back up there and setting up the speaker it was perhaps 11:45. After I read the restraining order to the strikers I told them after midnight, which at the time was the expiration date or time of the Stone Workers contract, and with the restraining order that after midnight District 50 would enter into the picture.

(Page 232)

CROSS EXAMINATION OF MR. L. L. WOOD BY MR. T. P. GHOLSON:

Q. Mr, Wood, I believe it is in testimony that you received a call on the 9th?

A. Yes, sir, I did.

Q. And as a result of that you proceeded to Henderson and Tungsten.

A. Yes, on the second call when I was asked to come. I went on the request of Cordell Holloman.

Q. You went to Tungsten?

A. Yes, sir.

Q. You met Mr. Shuey?

A. No, met Mr. Shuey in Henderson.

Q. Did Mr. Shuey go to the scene with you?

A. Yes, I believe so.

(P. 233)

Q. And who else?

A. Mr. Roberson may have gone with us.

Q. You recall whether he did or not?

A. I am inclined to believe he did.

Q. Did you spend the night in Henderson?

A. No, sir. I lived in Raleigh. Spent the night in Raleigh.

Q. Did you go back out there the 10th?

A. Went back to Henderson on the 10th. I believe I testified, I am vague whether I was in the vicinity of the mine on the 10th or not. I know I was in Henderson on the 10th.

Q. At that time you did meet with other officials of District 50?

A. If you are referring to the representative and directors, yes.

Q. Anybody on that payroll?

A. Yes.

Q. Who were they?

A. Director Fohl, Representative Roberson and myself.

Q. Mr. Shuey there?

A. No, sir.

Q. And where did you meet them and under what circumstances?

A. I believe I met them I think at the American Cafe. We had lunch there.

Q. On that day who else did you meet with at the cafe?

A. Cordell Holloman and I believe Jimmie Knight may have been present. I am not sure if there were others or not but I don't believe there were.

(P. 234)

Q. At that time there had been drawn up a notice to be published in the newspaper and broadcast?

A. A socalled press release was drawn up there. We were requested, or had been requested, by the pickets or strikers out there for us to take an active part and go in and see if we could get Cordell Holloman and Jimmie Knight put back on the job. We had advised the ones we talked to that we could not, that we had to keep hands off. The press release was issued for the benefit of other people to show them or tell them we could take no part in the thing, that we had no way and couldn't have until after January 15 of being in any position, had the company wanted to, to recognize us as the agent to go in and take over any grievance or anything else for these people.

Q. Couldn't have used the NLR Board?

A. No, sir. You know we couldn't.

Q. Could there have been de-certification?

A. Yes, sir. CIO, Stone Workers or the company could have.

Q. You couldn't?

A. No, sir.

Q. You didn't use that facility?

A. We have chosen not to.

Q. You were present when this was drawn up were you not, identified at exhibit "P-17"?

A. Yes, I was present when it was drawn up.

Q. And assisted in it?

A. No, sir.

(P. 235)

Q. You acquiesced in it?

A. If you will tell me what that means.

Q. Did you agree or disagree?

A. This was written by my superior and if he said it was right it was right with me.

Q. Were you consulted about it?

A. No, sir.

Q. You were just present?

A. Yes.

Q. In using the word "strike", that word is in there isn't it?

A. Yes, it's in there.

Q. You said that you didn't use the word "strike" except as an inducement like lawyers might threaten to sue.

THE COURT: There is no point in going over that.

Q. Did you know that Mr. Roberson had signs that were later exhibited using the word "strike"?

A. As representatives for the mine workers we cover large areas and carry on campaigns in many different areas and we at all times, I know it is a general practice, I have done it and every representative with the organization just about, if they have had a strike carry those things in the car.

Q. Did you have some?

A. I probably did.

Q. When you went out to the mine you had these?

A. Yes, sir. Had been used in other campaigns. Mr. Robertson (P. 236) had some and I had some.

Q. You know when Mr. Roberson delivered these to the strikers?

A. I don't know but I believe sometime on the 15th.

Q. Do you know to whom he delivered them?

A. No, sir, I don't

Q. Won't you present?

A. Mr. Gholson, I am not sure I was there when Mr. Robertson gave out the signs or not. If I was I would say so.

Q. You are the one that knows better than anybody else. Were you?

A. I am not sure.

Q. How do you know he gave them out?

A. They were signs Mr. Roberson had. I didn't give out any so Mr. Robertson must have.

Q. Do you know who took this press release to the paper?

A. No, sir, I don't.

Q. Know who paid for it?

A. I am assuming it wasn't paid for. I have never issued a press release. I don't know if you have to pay for them or if it is a matter of news.

Q. How long after the 15th was it before headquarters was set up for the strikers?

A. It was possibly within a matter of a week after the restraining order limited the number of pickets to six and we realized if these people ganged up at the mine in numbers more than six that District 50 was going to be held responsible. Representative Robertson and I (P. 237) started looking

around for a place far enough away from the mine that we would be within the outline of that restraining order, within the bounds of it I should say, for these people to get information if they wanted to, or accumulate or change shifts or whatever they wanted to. We got the place to protect ourselves.

Q. You say you advised the men to resort to no violence?

A. Always.

Q. Did you advise them to go back to work?

A. We advised them on several occasions to—

Q, Answer the question yes or no.

A. It is pretty cut and dried if I answer yes or no. We told the people to begin with to air their grievances through grievance procedure under Stone Workers contract and if they had done that there would have been no strike.

Q. Did you thereafter advise them to return to work?

A. I don't think we were in position to advise them one way or the other.

Q. You were advising them.

A. No, we were not advising. The men conducted the strike themselves. We obtained a building and we gave them some signs after the 15th but we didn't encourage them to stay out or go back

Q. On your loud speaker the night of the 14th, you had received notice at eight o'clock, came back to Henderson, sixteen or seventeen miles, went back, set up the loud speaker system, and about eleven-forty-five you made a broadcast?

(P. 238)

A. Yes, sir.

Q. And on the 15th you told them you would enter the picture?

A. I believe I said that.

THE COURT: There is no question but what there was a strike going on.

A. I think we are all aware that there was a strike going on.

Q. I assume it was not initiated or authorized by District 50, as both you and Mr. Fohl said. We will assume that for the time being and we will assume as you both said you not only didn't initiate or authorize or suggest the calling of a strike but as a matter of fact advised against it and said it was not the thing to do. Is it not a fair statement that beginning January 15, on which date this contract was supposed to expire, is it not a fair statement that after that date. District 50 did engage in a strike?

A. Well, I will say after the restraining order issued by the Superior Court we were brought into it then and I don't see how we could have stayed out of the thing with that. I think we would have put ourselves liable for failing to adhere to the restraining order.

Q. Is it not a true statement that District 50 did engage in that strike?

A. Yes, sir. There were District 50 signs out there if that infers that District 50 was in it. We were there. We were in the vicinity. I suppost we would say District 50 was a (P. 239) part of it.

THE COURT: That is a fair statement without regard to whether it constitutes something that makes you liable for damages.

A. I don't see how we could have been anything other after the 15th in view of the restraining order. I don't see how we could hold ourselves apart from it when we had been made a party in going to the court to get

the restraining order. If it had been against the strikers and no mention of District 50 it is possible we wouldn't have been in the picture.

Q. You were afraid to go home and leave the men to themselves because you were afraid you would be held responsible in any event?

A. I go home every night.

Q. But you kept in touch?

A. Yes, sir. We were on the scene. We had worked with these people ninety or a hundred days prior to this walkout. We were still holding organizational meetings and we had some obligation to these people. Not in conducting or taking part in the strike but application they had taken on these cards.

(Page 262)

WILLIAM CORDELL HOLLOMAN, being duly sworn, testified as follows:

CROSS EXAMINATIION BY MR. FULLER:

Q. Did you or anybody in Branch 98 ever petition for de-certification of that union as bargaining union at Tungsten?

A. None other than the letters we sent I wouldn't think.

Q. You knew you had the right for de-certification?

A. I was not familiar with that at all.

Q. You signed this letter of November 13 referring to rules and regulations covering that. Didn't you know what you were signing when you signed the letter?

A. I knew the purpose of the letter.

Q. Who wrote the letter?

(P. 263)

A. Mr. Wood prepared the letter for us the day before we signed it.

Q. 12 of November, 1952?

A. I don't know the date.

Q. The letter is dated November 13. Where was it written?

A. I don't know where it was written.

Q. You were not there when it was written?

A. No, sir.

Q. Who brought it to you to sign?

A. Pendley.

Q. Who brought it to Pendley?

A. I don't know.

Q. I believe you testified in the hearing here in January, 1953, the 29, in the District Court, "Re Johnston and others against Tungsten Mining Corporation, and so forth"?

A. Yes, sir.

Q. I read some of your evidence and see what you said at that time.

OBJECTION BY DEFENDANT OVERRULED.

You were questioned to this effect:

"Q. Did you file grievance with the union at that time?

A. No.

Q. You knew the existing contract required a grievance procedure?

A. That is true, but didn't have time.

Q. You say you didn't have time to file grievance?

(P. 264)

A. Yes."

You testified to that?

(No answer).

Q. Do you have any difficulty in hearing me?

A. I don't have any difficulty at all.

"Q. Did you file grievance with the union at that time?

A. No.

Q. You knew the existing contract required grievance procedure?

A. That is true, but didn't have time.

Q. You say you didn't have time to file grievance?

A. Yes."

Is that what you were asked and what you said?

(No answer).

Q. Would you like to see this?

A. Yes. (The witness looks at the transcript). That's right.

Q. You were talking about the occurrence on January 9, 1953?

A. Yes, sir.

Q. "Q. You mean you immediately talked to fellow members of the group and planned a strike?

A. I talked to fellow members of the group and they planned the strike.

Q. You were with them when they planned?

A. Yes, sir.

Q. You had meetings with them for the purpose of organizing new union?

(P. 265)

A. Yes, sir."

Q. Is that right? Are they the questions asked you and are they the answers you gave?

A. I suppose they are.

Q. That's what it says?

A. Yes.

Q. You don't deny them?

A. I don't deny them.

Q. "Q. You and these others went to the plant and talked to the workers as they left the shift at four o'clock on January 9?

A. Yes, sir.

Q. Told them what happened?

A. Yes, sir.

Q. And you asked them not to go back to work?

A. Told them what had happened. They didn't want to go back to work anyway. We didn't advise them what to do.

Q. You didn't suggest to them a picket line?

A. They could see that.

Q. You mean you established a picket line with the other members of the group?

A. Yes, sir.

Q. You have picket signs that say "On Strike"?

A. Yes, sir."

Q. Down to where I stopped reading is that correct?

A. Yes, sir.

(P. 266)

Q. Then you were asked:

"Q. The same day did you get in touch with District 50 representatives?

A. That is true.

Q. Tell them what had happened?

A. Yes.

Q. They sent a representative down to see you immediately?

A. Yes.

Q. That was Mr. Robertson?

A. No, sir, representative of District 50.

Q. You say his name was Robinson?

A. There were two, Robertson and Wood."

Is that correct down to there?

A. Yes, sir.

Q. "Q. That was on January 9 or 10?

A. Evening of January 9 I believe.

Q. You told them what had happened?

A. Yes, sir.

Q. What did they say?

A. I don't remember exactly. They didn't say anything direct. That they wanted to walk out.

Q. Did they say they would spread the strike?

A. They said they would give us some assistance after the 15th probably.

Q. So until the 15th they were present at the picket line?

(P. 267)

A. Occasionally."

Q. Is that right?

A. Yes, sir.

Q. The "they" referred to were Robertson and Wood?

A. That's right.

Q. "Q. How were you going to do the picketing?

A. We mor or less organized it after we started it."

Then you say Mr. Robertson didn't help you organize the pickets and you didn't think Mr. Wood helped you and they didn't tell you to arrange who would carry the signs.

"Q. You were present when they gave instructions to the pickets on January 14?

A. I was present, yes, sir."

And at the bottom of page 135 of the transcript, "No question in your mind but what you went on strike January 9?", and you answered, "No question", and you stated that you aided in the picketing?

A. Yes, sir.

Q. You have heard the press release referred to. Did you go to the newspaper office and radio station to give that in and to have it broadcast?

A. I don't recall whether I went or not.

Q. Don't you recall going to one or the other or both with Mr. Robertson?

A. No, sir.

(P. 268)

Q. Or Mr. Wood?

A. No, sir.

Q. You don't recall it but you don't deny it?

A. No, sir.

THE COURT: Did you sign the press release?

A. Yes, sir.

Q. What did you do with it after it was signed?

A. We were all eating lunch together. I don't know.

Q. You don't remember taking it to the paper?

A. No, sir.

BY MR. FULLER:

Q. Didn't you take it to the radio station and have it copied there or didn't somebody at the radio station copy it and then you took it to the newspaper, the Henderson Dispatch?

A. I don't recall. I don't deny it but I don't remember it.

Q. You did testify in Henderson at the LRB hearing?

A. Yes, sir.

Q. When Mr. Dyer questioned you about this press release he said, "All right, Mr. Holloman, that press release was taken by Mr. Roberson and you went to see the local radio announcer first" and you answered "Yes".

Q. "Q. And you told him about it and gave it to him and you made a copy of it?" to which your answer is "Yes, sir".

A. What was that?

(P. 269)

Q. Still on the same question of the press release, this is the next question after the one I read awhile ago: "Q. And you told him about it and gave it to him and you made a copy of it?", to which you answered "Yes, sir".

A. I don't recall that but it could be true.

Q. "Q. And this was later announced over the air. Did you later hear the announcement?" "A. We heard it announced."

A. Yes, sir.

Q. "Q. Thereafter you went to the editor of the Henderson Daily Dispatch and gave him that press release, didn't you?" "Yes, sir".

A. It could be.

Q. "Q. Along with Mr. Robertson?" Answer: "Yes, sir." Is that right?

A. Yes, sir.

Q. On Page 131 of the hearing in the District Court go to the top of the page: "Q. During the course of those transactions in the fall of 1950 didn't they say that District 50 didn't use the procedure of the United Relation Board?" "Didn't they also say that when they wanted something the way they got it was by striking"? and you said, "I believe so." Is that correct?

A. That's what it says here.

Q. What did you say at that hearing when under oath?

A. I don't remember saying it but I guess I did.

Q. You don't deny it?

A. No, sir.

(P. 270)

Q. "Q. Did they not also say that sometime after a company refused to recognize and bargain with them, did they not say at the termination of the existing contract they were going to call a strike?" And you said, "What was the first of the question?", and it was repeated, "Sometime after October 13 didn't they tell your group at the meeting that at the termination of the existing contract on January 15, 1953 they were going to call a strike?". There was an objection which was overruled and you answered "I believe so". Is that right?

A. There were also a lot of other things I said at the meeting.

Q. I just asked you about that.

A. Yes, sir.

THE COURT: In your examination today you said you were told that after January 15 they would give you some help.

A. Yes, sir, that's right.

. . . .

(P. 284)

J. B. FOREMAN, being duly sworn, testified as follows:

CROSS EXAMINATION OF MR. FOREMAN BY MR. GHOLSON:

Q. You say you went to Henderson on October 19, 1952?

A. No, I went to Henderson on October 1, 1952.

Q. At that time and prior to that time you knew Stone Workers Union was duly certified bargaining agent for workers at Tungsten mine?

A. Yes.

Q. You knew on December 18, 1952 that Stone Workers Union was duly certified bargaining agent for Tungsten mine?

A. I knew certification was standing all right.

Q. And certification was standing all right on January 15, 1953?

A. So far as we were concerned, yes, sir.

Q. And you knew there had been no de-certification?

A. That's right.

Q. And the certification that had been made by the NLRB was still standing on those dates?

Q. Mr. Foreman, you were appointed administrator on what date?

A. I believe I can give you the date in just a minute. November 13 I taken over as administrator.

(P. 285)

Q. Your apppointment as administrator was strictly under the constitution and regulations of Stone Workers Union?

A. Yes.

Q. Perfectly proper?

A. Yes.

Q. And you had full authority?

A. Yes.

Q. Your actions as administrator were binding on the union. Is that correct?

A. That is correct.

Q. And you did handle the work of the union, or the contacts of the union with Tungsten Mining Corporation?

A. Yes, sir.

Q. You had a committee you consulted with of the local union?

A. Yes, I did.

Q. When was your employment with Stone Workers terminated?

A. In April, 1954?

Q. And you haven't been connected with them since that time?

A. No, I have not.

Q. Where do you live at the present time?

A. Martinsburg, West Virginia.

Q. Been there since April, 1954?

A. Yes, sir.

Q. What is your employment?

A. Carpenter.

(P. 286)

Q. Been in that employment since April, 1954?

A. The first year I didn't do anything. Did some work on my home.

Q. When were you first contacted, or you contact anybody else, or you were approached, or you approached anybody else about being a witness in this case?

A. Last week. Several days when I would go home my wife would tell me somebody by the name of "Mr. Green" had been calling me from North Carolina. I told her I didn't know any Mr. Green and they would have to call when I was home. I believe it was Saturday evening the call came in. That would be the third or fourth call that came in, and I was home. Mr. Green called me.

Q. You hadn't talked with anybody connected with United Mine Workers District 50 prior to that time?

A. No.

Q. You had a talk with Mr. Green and you came to North Carolina for what purpose?

A. Mr. Green asked me to come down.

Q. And you did come down?

A. Yes.

Q. When?

A. I came down Monday.

Q. Did you bring the records you have there that you have with you at that time?

A. Yes, I did.

Q. I ask you when you left the employment of Stone Workers Union (P. 287) why you didn't leave them in the office at Winston-Salem?

A. That was not considered our office.

Q. What was considered the office?

A. International office in the State of Vermont.

Q. Why didn't you leave them in the State of Vermont?

A. Nobody asked for them. My employment ended in West Virginia.

Q. In 1954?

A. Yes, sir.

Q. Where did you receive the records you have there?

A. From here and there.

Q. What do you mean?

A. I was a fellow that didn't stay much in one place. When this situation was going on I was handling situations in Baltimore, Buckinston, Camden, Winston-Salem and here.

Q. Do you have the envelope?

A. Yes, this is the envelope they came in.

Q. You received those at Henderson?

A. Yes, sir.

Q. Kept them with you at the time your employment with Stone Workers was terminated you didn't give any information that you had—

A. Not many records left. Mr. Scott had the records.

Q. You received the contents of that envelope about January 21 or 22, 1953.

A. Whichever is stated on there.

Q. Until that time you received nothing in writing about any (P. 288) resignation of any employees of Tungsten mine until you received that letter January 21 or 22nd?

A. I hadn't received letters from them.

Q. That was the first writing you had?

A. Yes, sir.

Q. When you went to Tungsten mine in October, 1952 you knew the checkoff records of Tungsten Mining Corporation disclosed that a majority of the employees were checkoff of Stone Workers Union?

A. I don't know.

Q. You know what the checkoff dues were?

A. I believe $2.00 per capita, $1.25 to the International.

Q. That $2.00 deducted by Tungsten mines and paid to the local union around the first to tenth of each month for the prior month wasn't it?

A. I believe around the first week of each month.

Q. A list of the employees was given with the checks?

A. That's right.

Q. Did you receive a check January 9, 1953 as administrator for checkoff for December, 1952?

A. I received this check, yes, sir.

Q. What is the amount?

A. $498.00.

Q. And a list of the employees from whom this has been deducted and paid as dues was attached thereto.

A. I think so.

(P. 289)

Q. So that would disclose if you divide it by two that 249 employees had checkoff authorization with the company?

A. That's right.

Q. During the month of December, 1952?

A. Yes.

Q. Now, Mr. Foreman, as administrator you had authority to negotiate a contract with Tungsten mine didn't you?

A. Yes.

Q. On November 14, 1952 you gave them notice you desired to negotiate a new contract?

A. Yes.

Q. And you did negotiate a new contract?

A. Yes.

Q. It has been denied by witnesses for the plaintiff that the negotiating occurred in New York but assuming that they were negotiated in New York was there anything improper about that?

A. No, so far as I was concerned. I was administrator and felt that I had the right.

Q. Before signed it was negotiated with the workers union at Tungsten?

A. Yes.

Q. You approved of it and you entered into the contract for Stone Workers Union?

A. Yes, sir.

Q. And Mr. Long and Mrs. Sweet signed for the company?

(P. 290)

A. I believe they did.

Q. And there were certain changes made in the contract from the previous contract which included wage increase?

A. Yes, sir.

Q. 12½c across the board?

A. Yes, sir.

Q. You entered into that contract because you knew and felt as administrator you were entering into a fair contract for employees of Tungsten mine?

A. Yes.

Q. That contract went into effect January 15, 1953 and continued for a period agreed on in the contract?

A. Yes.

Q. There has been some suggestion made, I don't know why but it was, that on one or two occasions you visited in the home of Mr. Sweet.

A. That's right.

Q. Was there anything improper about that?

A. I don't think so.

Q. And nothing improper discussed or done while you were a guest at his home?

A. I don't think so.

Q. You didn't consider it was?

A. No:

Q. And no negotiations were carried on there in secret between (P. 291) you and Mr. Sweet?

A. No, I don't think any secret discussion.

Q. Now you mentioned that the company placed an advertisement in the Henderson Daily Dispateh. I ask you if the company didn't state in that advertisement that they would bargain with any union duly certified by the National Labor Relations Board?

A. I think that's right.

Q. And when you came back from Camden, Tennessee Mr. Green asked you if you had authority to process grievances with or without a committee and you said yes. That was right?

A. Yes, sir.

Q. That authority was proper under the constitution?

A. It was.

Q. No grievances were filed with you were there?

A. I don't believe there were.

(P. 292)

JETER MURDOCK, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GHOLSON:

Q. Where do you live?

A. Henderson.

Q. Your occupation?

A. Shift boss now.

Q. Where?

A. Tungsten Mining Corporation.

Q. On January 9, 1953?

A. Assistant mine foreman.

Q. On that date will you relate an incident that has been testified occurred between you and Mr. Cordell Holloman and Mr. J. W. Knight?

A. On that day Jack Townsend was working under me. I got to the job about eleven-thirty and told Jack to let's go up in the stopes where these boys were working. It was about a five minutes walk (P. 293) from the shaft to this working place. We got up to this working place about twenty-five minutes to twelve o'clock and Mr. Holloman and Mr. Jimmie Knight were eating lunch. I looked at my watch and asked Jack what time it was. He said it was twenty-five minutes to twelve. That was the time I had. Neither of us said anything to the boys. We went up in the stope, lined the work in the stope. I said, "Jack, have you warned these boys about eating dinner early?" He said, "Yes, I sure have, two or three times before". I said, "What you going to do about it?"

MR. ARENDELL: Were either Mr. Holloman or Mr. Knight present at that conversation?

A. No, sir. We were up on the stope and they were down on the track.

OBJECTION BY DEFENDANT OVERRULED.

Jack said, "Only one thing to do". They had been warned before. He said, "I will have to let them go". I didn't tell him to let them go or not. That was up to him. We came down and I went to the top of the ground to the shaft where I eat dinner.

Q. Did you see them afterward?

A. No, sir.

Q. Did you at this time know that Cordell Holloman was the purported president of some organization or union there?

A. No, sir, I sure didn't.

Q. Had you prior to this time ever eaten with Cordell Holloman or Jimmie Knight except at the regular hour, twelve to twelve-thirty?

(P. 294)

A. No, sir. I eat on the surface and they eat underground.

JACK TOWNSEND, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GHOLSON:

(P. 300)

Q. State your name.

A. Jack Townsend.

Q. Where do you live?

A. Henderson.

Q. Your occupation?

A. Assistant mine foreman.

Q. How long you been working for Tungsten mine?

A. Little over eight years.

Q. On January 9, 1953 what was your occupation?

A. Shaft boss.

Q. And was there working under you Cordell Holloman and Jimmie Knight on January 9, 1953?

A. Yes, sir.

Q. Relate to the Court what incident took place on that day between yourself and those two men.

A. Jeter Murdock came down the shaft to the 500 level at 11:30 and (P. 301) he and I walked back to this stope where these fellows were working. About five minutes walk. These two fellows sitting on the track eating lunch. We went on up in the stope. Jeter said, "Those fellows eating early. Have they been warned?" I said, "Yes, they have".

Q. Had they been warned?

A. Yes, sir.

Q. You had warned them yourself?

A. Yes, sir, on the 7 of January and on the 8 of January. Nelson Pike told me he had warned them. He was shaft boss at the other end of the mine. We went on in the stope and Jeter said, "What you going to do?" I said, "Not but one thing to do." I went and told the boys that was all. They would just have to get their time. So I took them out to the surface.

Q. Had you at any time prior to this time ever eaten at any time except the proper time with either one?

A. I won't say about the proper eating time but never had eaten with those fellows.

Q. Had you ever eaten with them except from twelve to twelve-thirty?

A. No, sir.

Q. Did you know January 9, 1953 that Cordell Holloman was president of some union or held some office therein?

A. No, sir, I didn't.

THE COURT: Had you heard it?

(P. 302)

A. No, sir, I hadn't heard it.

W. L. LONG, recalled, testified as follows:

RE-DIRECT EXAMINATION:

(P. 308)

Q. This morning you heard Mr. Foreman testify about the membershipp in Stone Workers who had gone over and signed cards in District 50. Did he tell you anything like that?

A. No, sir. On the contrary Mr. Foreman told me in his opinion there were not over twenty-five or thirty at most disgruntled members causing all this trouble. At that time we had in our files (P. 309) the checkoff statements saying they were members of CIO union, Stone Workers Union. We discussed that. I saw Mr. Foreman a number of times from the period he came there and was made administrator until after he negotiated this contract. All during the strike I saw a great deal of him. We were constantly conferring together. I never had any suggestion or statement from anybody except indirectly from Mr. Fohl through Mr. Sweet that a majority of our people had signed cards with this union until on the 21 or 22 of January there came through the mail a letter from Mr. Cordell Holloman enclosing in that letter 269 checkoff withdrawals, but until we received that thing after the strike was virtually ended, a week after injunction signed by Judge Williams and reign of terror ended this information was sent to us through the mail. At that time all our checkoff certificates had been cancelled and new ones being substituted. Mr. Foreman never told me any such thing.

THE COURT: You still got a contract with Stone Workers?

A. Yes, sir.

Q. How many members you got?

A. About eighty percent of our membership and that is some over 400. We have 550 members eligible and I think the membership something over 400. Ran seventy-five to eighty percent in the union and twenty to twenty-five percent not in the union.

Q. When did you negotiate to sign the last contract?

A. We signed the last contract, it ran out on January 15, 1956. We had just signed prior to its expiration new two year (P. 310) contract which will expire January 15, 1958.

THE COURT: With whom did you negotiate in that instance?

A. Mr. Scott and the committee of the union.

Q. Who are they?

A. President Daniel Hayes, a Mr. Hughes, a man named Harris. Quite a large membership this year. The committee was not on these discussions. I would like to say I went home last night and looked up my diary. I keep one every day and went back to see what I did December 17 and 18 last year and in my diary it shows I went to the mine on the 17, spent the entire day there in negotiations with Foreman, Swan and Martin, and Mr. Bailey on our side, and I stayed there until half past six. Got home late for supper. Didn't reach an agreement. Went the next day and spent the entire day and did reach an agreement. Got home at seven o'clock.

EXHIBITS

PLAINTIFF'S EXHIBIT 14

DISTRICT 50, UNITED MINE WORKERS OF AMERICA

Address Reply to:
Region 19, District 50, U. M. W. A.
311 Grace Street
Richmond, Virginia
Telephone: 7-7592

900 15th Street, Northwest
Washington 5, D. C.
October 30, 1956

National Labor Relations Board
Washington, D. C.

Attention: All Board Members

Gentlemen:

For your information, the United Mine Worekrs of America have as members a very substantial majority of the Production and Maintenance Workers of the Tungsten Mining Corporation, Tungsten, North Carolina. A contract has been in effect with this Company thru the C. I. O. United Stone and Allied Products Workers of America for a number of years and this contract expires around January 15, 1953. We have given this Company due notice that the United Mine Workers of America now represent these employees, by letter dated October 17, 1952, and by personal visit of representatives of this Organization with the General Manager and Vice President, Mr. J. R. Sweet.

I am attaching copies of correspondence between this Organization and Mr. Sweet. I am also attaching notices which he has posted in the Plant since our first efforts to advise him of the Union his employees desire.

As you can see from these notices, Mr. Sweet is trying to imply to his workers that they can only be certified thru the National Labor Relations Board and that by some strange method of thinking, his Company has no right to recognize a Union unless this procedure is followed and no legal right under the circumstances to refuse to recognize any union until the issue is settled.

We are merely advising your Board of this situation as a matter of record because this Organization intends to fully support and protect the interests and desires of the workers of this Mining Company, by every moral and legal means at our disposal, including that of strike action, if necessary.

Very truly yours,

/s/ Robert R. Fohl
Robert R. Fohl
Director Region 19

cc: National Labor Relations Board, Winston-Salem, N. C.
National Labor Relations Board, Baltimore, Maryland
Forrest H. Shuford, Commissioner, Dept. of Labor
Walter H. Shuey, Representative, Dist. 50, UMWA
A. D. Lewis, Chairman, Organizing Committee, Dist. 50
J. R. Sweet, Vice President and General Manager

Enclosure (5)

RRF:GD

PLAINTIFF'S EXHIBIT 17

Jan. 10, 1953

PRESS RELEASE:

The Tungsten Mine is on strike due to the spontaneous walk out of all workers because of the discharge of the President and Recording Secretary of the new local union of the United Mine Workers of America.

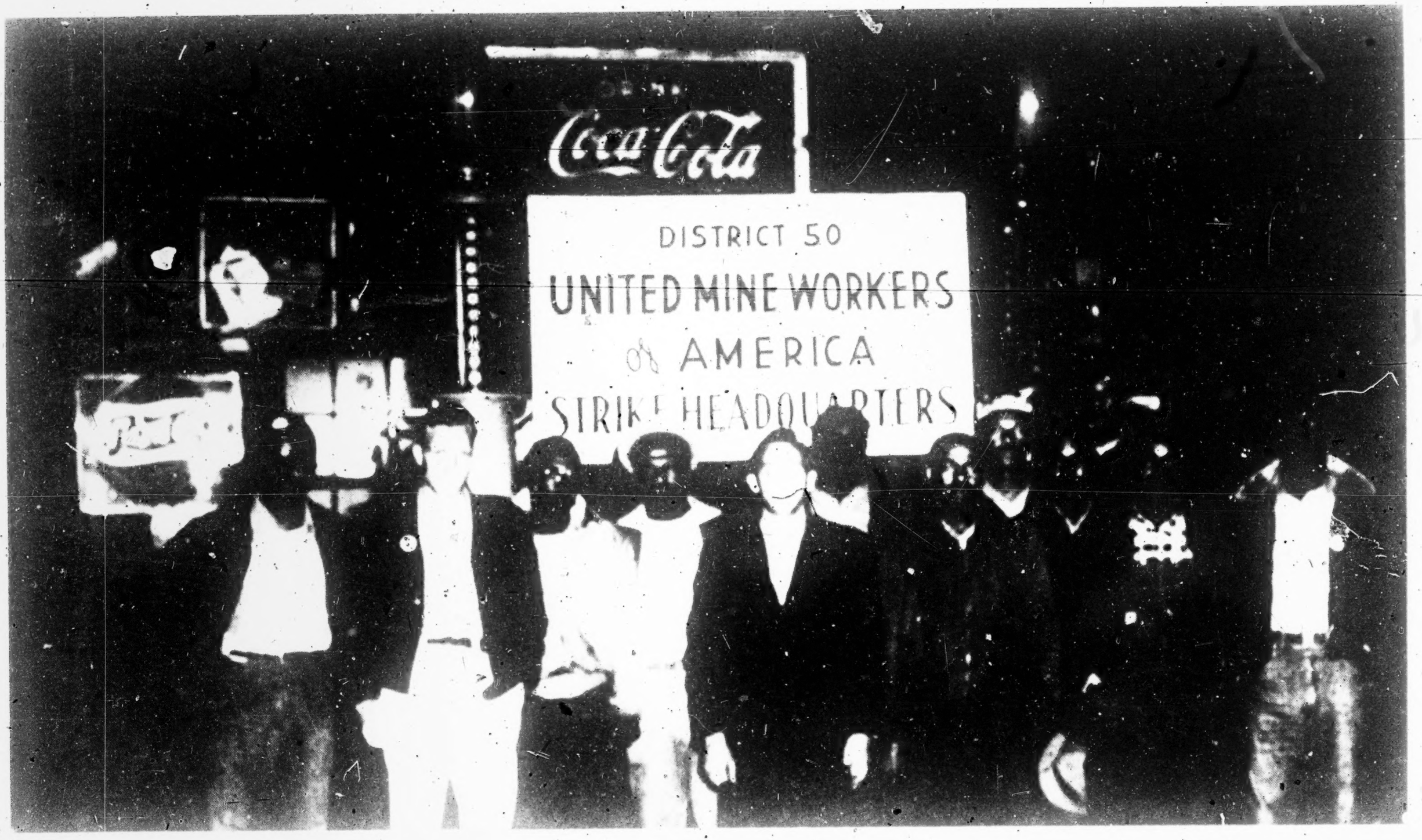
These two officers were fired for an alleged practice which has been an accepted custom by the workers and the Company.

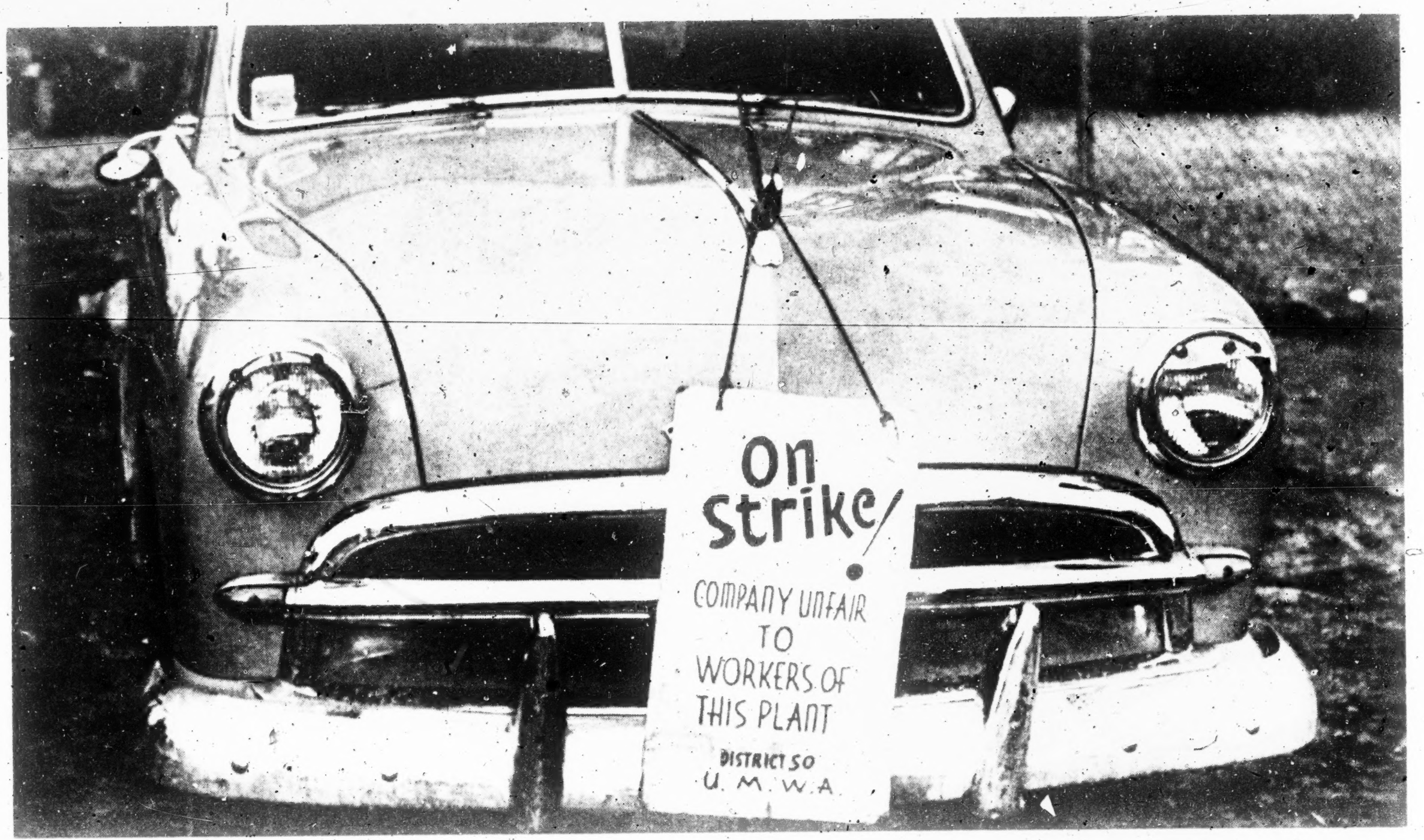
The prime reason for these discriminatory discharges was action within the past two or three months by Local 98 of the CIO Stone and Quarry Workers local to disaffiliate and write a new contract under the United Mine Workers of America. The workers officially voted and informed the Company not to sign, amend or extend any contract with the CIO. Despite this official action and notice by a substantial majority of the workers the Company and the CIO have attempted to work out an illegal back-door two year agreement under an administrator set-up against the wishes of the workers.

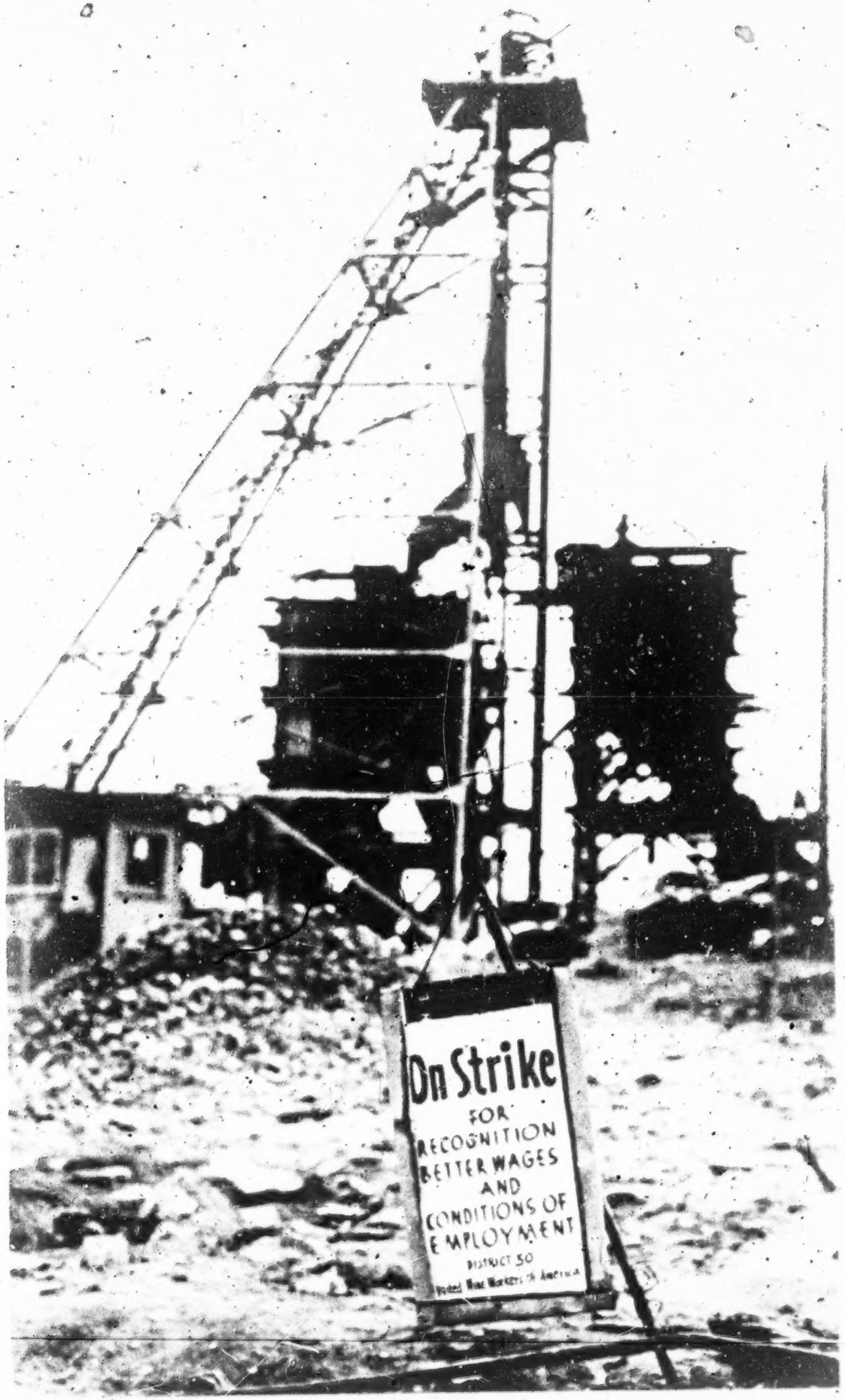
In addition to a strike for the two discharged workers, it will also be a strike for recognition of the United Mine Workers of America and a new contract with proper wages, hours and working conditions from January 15, 1953 on.

Cordell Holloman

President Tungsten Local Union
United Mine Workers of America


Coca-Cola
DISTRICT 50
UNITED MINE WORKERS
of AMERICA


On
Strike!
COMPANY UNFAIR
TO
WORKERS OF
THIS PLANT
DISTRICT 50
U. M. W. A.


On Strike
FOR
RECOGNITION
BETTER WAGES
AND
CONDITIONS OF
EMPLOYMENT
DISTRICT 50

On Strike
FOR
RECOGNITION
BETTER WAGES
AND
CONDITIONS OF
EMPLOYMENT
On Strike
FOR
RECOGNITION
BETTER WAGES
AND
CONDITIONS OF
EMPLOYMENT
ON
STRIKE

On
Strike/
COMPANY UNFAIR
TO
WORKERS OF
THIS PLANT
DISTRICT 50
U. M. W. A.

No. [redacted]

Office - Supreme Court, U.S.
FILED
JUN 19 1957
JOHN T. FEY, Clerk

APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 7293

TUNGSTEN MINING CORPORATION

Plaintiff Appellant

vs.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA

Defendant Appellee

YELVERTON COWHERD, *Attorney*
500 15th Street, N. W., Washington 5, D. C.

ALFRED D. TREHERNE, *Attorney*
500 15th Street, N. W., Washington 5, D. C.

ARMISTEAD J. MAUPIN, *Attorney*
930 Insurance Building, Raleigh, N. C.

BANKS ARENDELL, *Attorney*
824-27 Insurance Building, Raleigh, N. C.

CHARLES P. GREEN, *Attorney*
824-27 Insurance Building, Raleigh, N. C.

ATTORNEYS FOR DEFENDANT APPELLEE

FILED
OCT 24 1956

COMMERCIAL PRINTING COMPANY, RALEIGH, N. C.

APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 7293

TUNGSTEN MINING CORPORATION

Plaintiff Appellant

vs.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA

Defendant Appellee

INDEX TO APPELLEE'S APPENDIX

	PAGE
1. Defendant's Exhibit 1 (record page 249)	1
2. Defendant's Exhibit 2 (record page 276)	2
3. Defendant's Exhibit 3 (record page 274)	3
4. Defendant's Exhibit 4 (record page 243)	4
5. Defendant's Exhibit 5 (record page 244)	6
6. Defendant's Exhibit 6 (record page 292)	7
7. Defendant's Exhibit 7 (record page 249)	16
8. Defendant's Exhibit 8 (record page 275)	17
9. Defendant's Exhibit 9 (record page 270)	18
10. Defendant's Exhibit 10 (record page 292)	22
11. Order, Judge Gilliam, Dated 18 Nov., 1954	28
12. Excerpts from Oral Testimony taken from Transcript of Evidence	
Sam H. Scott	29-36
W. L. Long	36-44 & 62-63
C. R. Williams	44-45
James R. Sweet	45-62
B. B. Bailey	64
L. R. McClelland	64
Robert R. Fohl	65-78
Lucian Lincoln Wood	78-85
Cordell Holloman	85-101
J. B. Foreman	101-110
Jeter Murdock	110

DEFENDANT'S EXHIBIT D-1

By letter dated November 13, 1952 and mailed November 14, 1952, Tungsten Mining Corporation was advised:

> Pursuant to the Labor Management Relations Act of 1947, and with express reference to Title I, Section 8 (d) thereof, your (sic) are, hereby, notified that in accordance with Article 27, Duration of Agreement, of agreement dated May 15, 1950 and expiring on January 15, 1952 and Extension Agreement expiring on January 15, 1953 between Tungsten Mining Corporation and United Stone and Allied Products Workers of America, Local Branch 98, this is to serve notice that the majority of the members of Local Branch 98 desire to terminate the above mentioned contract in its entirety on January 15, 1953.

This will also serve to notify you that any new Contract or Extension Agreement under this present Contract entered into with the above named Union will not be authorized or sanctioned by us.

Yours very truly,

/s/ George W. Pendley
Recording Secretary, Local Branch 98

Witnessed:

/s/ Cordell Holloman
/s/ Paul D. Gentry
/s/ R. H. Harris

cc: United Stone & Allied Products Workers of America, CIO National Labor Relations Board. Winston-Salem, N. C.

DEFENDANT'S EXHIBIT D-2

UNITED STONE AND ALLIED PRODUCTS
WORKERS OF AMERICA

November 14, 1952

Tungsten Mining Corporation
Post Office Box No. 81
Henderson, N. C.

Gentlemen:

As per Article 27 of Agreement now in effect between Your Company and the United Stone and Allied Products Workers of America, please consider this as notice that the above stated Union wishes to terminate said Agreement on January 15, 1953.

I will contact you in the next few days for purpose of setting date for purpose of starting negotiations on a new agreement.

Yours very truly,

J. B. FOREMAN
International Representative

Registered mail
return receipt
requested

DEFENDANT'S EXHIBIT D-3

UNITED STONE AND ALLIED PRODUCTS WORKERS OF AMERICA
Scampini Building
Barre, Vermont

Affiliated with the Congress of Industrial Organizations

J. B. Foreman
International Representative

November 18, 1952

TO ALL MEMBERS OF LOCAL 98 UNITED STONE AND ALLIED PRODUCTS WORKERS OF AMERICA.

This is to inform you that the International Executive Board of the United Stone and Allied Products Workers of America finds that a crisis exists in the affairs of said Local 98, that in order to protect the interest of its members, it was necessary to appoint an administrator.

The writer was appointed administrator and the following appointments have been made to act under his directions:

Mr. Frank Swann, President
Mr. R. D. Carde, Financial Secretary-Treasurer

Other appointments will be made from time to time.

Very Fraternally yours,

/s/ J. B. Foreman
Administrator

DEFENDANT'S EXHIBIT D-4

MEMBERSHIP APPLICATION AND CHECKOFF AUTHORIZATION DISTRICT 50, UNITED MINE WORKERS OF AMERICA

I hereby request and accept membership in District 50, United Mine Workers of America, and authorize it to represent me in my behalf to negotiate and execute any and all agreements pertaining to wages, hours, and conditions of work. This power to act in my behalf expressly revokes and shall supersede all previous authorizations which I may have given to any other person or organization for the purpose of representing me as an employee. The Constitution, Laws, Rules, Policies, Regulations and Edicts of the above Union and all amendments thereto shall be binding upon me. In consideration for services rendered and to be rendered by the above Union, I agree to pay all reasonable amounts of money lawfully required as a condition to obtain and maintain membership in good standing.

My employer, therefore, is hereby authorized to deduct from my wages and turn over to the officer or representative, as designated in the applicable agreement, all such amounts of money above outlined and limited to the amounts provided in the applicable agreement between the above Union and my employer, and this authorization and assignment shall be irrevocable for the term of the applicable contract between the Union and the Company or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is the lesser, until I give written notice to the Company and the Union at least 60 days and not more than _____ days before any periodic renewal date of this authorization and assignment of my desire to revoke the same.

Signature____Charles W. Ballock____ Clock No.__70__
Address__551 Charles Street, Henderson, North Carolina.
Employed by_____Tungsten Mining Corporation_____
Social Security No.___242-24-3458___ Date__10-10-52__

This paper UNION MADE by District 50, UMWA

Dist. 50 Form 528 Revised 5-20-48

This represents 386 completed and executed membership applications in accordance with specimen above. Record p. 244.

DEFENDANT'S EXHIBIT D-5

Date: November 3, 1952

To Whom It May Concern:

I hereby wish to sever all relations with the United Stone and Allied Products Workers of America and request it no longer be the certified Bargaining Agent at the Tungsten Mining Corporation, Tungsten, North Carolina.

Signed: DALTON ABBOTT
Badge No. 270

Witness: HAROLD RANER

This represents 269 completed and executed severence notices in accordance with specimen above. Record p. 244.

DEFENDANT'S EXHIBIT D-6

ALPHABETICAL LIST OF NAMES ON ATTACHED OFFICIAL NOTICE SLIPS

	Name	*Badge No.*
1	Abbott, Dalton	270
2	Adcox, Alton K.	—
3	Algood, Earnest, Jr.	225
4	Allen, Elquit	137
5	Allen, Plummer E.	20
6	Allen, William	140
7	Alston, Claude	174
8	Alston, Jeff	—
9	Alston, John B.	93
10	Alston, Robert T.	340
11	Ayscue, Ollie N.	234
12	Ayscue, Sidney P.	39
13	Bates, Junius Lee	271
14	Bland, Carter L.	95
15	Brame, E. G.	21
16	Brame, Grady	105
17	Brame, Monroe, Jr.	154
18	Brandt, Junious	122
19	Brown, James E.	121
20	Brown, Samuel L.	43
21	Buchanan, Baxter	—
22	Buchanan, Columbus	141
23	Buchanan, Dewey P.	—
24	Buchanan, Homer H.	—
25	Buchanan, Phillip	16
26	Buchanan, Robert J.	53
27	Bullock, Elvin D.	—
28	Bullock, Herbert	98
29	Bullock, Louis	205
30	Bullock, P. A.	148
31	Burchett, James K.	275

	Name	Badge No.
32	Burgess, Glenn G.	90
33	Burnell, Albert	127
34	Burrell, Clifton E.	172
35	Burwell, Fred	246
36	Burwell, Johnnie	162
37	Burton, George	118
38	Brandon, Irwin	260
39	Burwell, Sandy	337
40	Caple, Sylvester	329
41	Cannady, Gerald	171
42	Carlberg, Arthur	—
43	Champion, Macy	326
44	Choplin, Harold J.	51
45	Choplin, M. T.	58
46	Chavis, Eddie	92
47	Chavis, Jarvis	139
48	Cheek, Everett B.	130
49	Cheek, Richard A.	163
50	Chewning, Charles R.	46
51	Clark, Charles M.	241
52	Clark, Paul	286
53	Cochran, Robert	240
54	Coghill, Fred	111
55	Collins, G. B.	—
56	Cooper, Jasper	179
57	Cooper, W. H.	—
58	Crews, Lattie	112
59	Davis, Edward, Jr.	217
60	Davis, Henry	165
61	Davis, Peter M.	151
62	Davis, John R.	101
63	Dixon, Robert, Jr.	67
64	Dunston, James E.	296
65	Dunston, Jimmie F.	57
66	Durham, James	299
67	Durham, Henry L.	170

	Name	Badge No.
68	Davis, Irvin S.	423
69	Eaddy, Clarence	169
70	Ellington, Lawrence M.	279
71	Elliott, James O.	156
72	Evans, Charlie, Jr.	250
73	Evans, William H.	4
74	Fame, Dick	62
75	Fisher, C. R.	—
76	Fleming, John, Jr.	178
77	Floyd, Robert	55
78	Fortner, Roy	—
79	Foster, David	321
80	Foster, John A.	136
81	George, K. L.	8
82	Glover, James E.	209
83	Glover, James H.	47
84	Glover, Joseph	—
85	Gooch, Thomas	298
86	Gray, Robert	—
87	Gray, Willie	144
88	Griggs, James P.	280
89	Grissom, Robert C.	—
90	Greenway	153
91	Gupton, Alvin	—
92	Gupton, David B.	—
93	Hargrove, Eugene	161
94	Hargrove, John Elna	—
95	Hargrove, Thomas W.	119
96	Hargrove, Willie J.	220
97	Hanna, L. D.	63
98	Harris, E. A.	—
99	Harris, Furman W.	—
100	Harris, R. H.	64
101	Harris, Willie H.	223
102	Harris Willie R.	278
103	Harrison, James	72

	Name	Badge No.
104	Hanks, William	339
105	Hayes, James	80
106	Hayes, Perry R.	103
107	Haynes, James	45
108	Henderson, Herbert	135
109	Henderson, Rubin	107
110	Henderson, Willie M.	242
111	Hendrick, Clifton	282
112	Hendricks, Jacob A.	269
113	Hendricks, Otis L.	44
114	Hines, Dennis M.	—
115	Holloman, Cordell	39
116	Howard, James A.	214
117	Howell, Thomas	244
118	Hughes, J. B.	—
119	Hunt, Alvin	—
120	Hunt, Edward L.	276
121	Hunt, James E.	37
122	Hunter, Clarence	300
123	Huskins, L. L.	207
124	Jenkins, William B.	285
125	Jernigan, James L.	40
126	Johnson, James A.	160
127	Johnson, R. L.	33
128	Johnston, H. E.	—
129	Johnston, S. H.	50
130	Jones, Clarence E.	50
131	Jones, Douglas R.	—
132	Jones, H. A.	252
133	Jones, Jimmie, Jr.	145
134	Jones, Rufus H.	—
135	Jones, Sylvester	277
136	Judkins, William T.	108
137	Kearney, Emanuel	113
138	Keel, Melvin	249
139	Keener, H. F.	26

	Name	Badge No.
140	Kelly, George E.	—
141	Kelly, Nathaniel	53
142	Kersey, John T.	—
143	Kersey, Robert W.	176
144	Kersey, Thomas W.	191
145	Kilpatrick, P. H.	—
146	Knight, Jimmie C.	229
147	Knott, P. W.	—
148	Lacy, Kenneth C.	—
149	Lemas, Robert	134
150	Levister, Joseph W.	273
151	Link, Jasper	243
152	Long, Paul V.	35
153	Lewis, Willie Grant	56
154	Manon, Boley, Jr.	86
155	Marron, Samuel	116
156	Mason, Edward	—
157	Mason, George A.	74
158	Matthews, John E.	—
159	McCoy, James E.	251
160	McKnight, Robert	—
161	Meadows, Richard C.	267
162	Mekhor, Nathaniel	128
163	Merkle, Ernest	110
164	Millsaps, James B.	83
165	Mitchell, Harold	256
166	Mitchell, Willie, Jr.	109
167	Monroe, James	Mill
168	Moore, Willard	262
169	Mosley, Ben F.	—
170	Murphy, Lawrence M.	208
171	Overby, Willie	292
172	Palston, James	164
173	Patton, Francis J.	224
174	Pendley, George W.	—
175	Pettiway, Hillard	235

	Name	Badge No.
176	Person, William H.	306
177	Pinpler, Bruce C.	—
178	Plummer, Clarence	66
179	Poole, Dennis	25
180	Pritchett, Robert	147
181	Ragland, George W.	253
182	Ragland, Harold T.	77
183	Rainey, James E.	245
184	Raner, Harold E.	99
185	Ragand, Rufus M.	259
186	Raylord, Willie R.	180
187	Reamey, Clifton C.	177
188	Reams, H. A., Jr.	34
189	Reams, J. H.	—
190	Reed, Percell	218
191	Reynolds, Henry	28
192	Rice, Nathaniel	227
193	Richardson, Early	152
194	Richardson, Monice	201
195	Richardson, Willie	41
196	Riggon, R. A.	30
197	Robertson, H. W.	27
198	Roberson, J. B., Jr.	322
199	Robertson, J. E.	236
200	Roper, Ernest H.	211
201	Roper, Everett J.	312
202	Royster, Charles	334
203	Royster, Milton	—
204	Satterwhite, Edward	125
205	Satterwhite, W. D.	9
206	Scott, Fred	328
207	Self, J. R.	—
208	Shearin, Herman, Jr.	—
209	Shields, Thomas	274
210	Sloan, Thomas M.	149
211	Small, Sandy	91

	Name	Badge No.
212	Smith, Harold	73
213	Sneed, Charles	—
214	Stamback, Clifton P.	—
215	Stanley, D. S.	5
216	Steed, Moris	129
217	Stevenson, Frank	294
218	Stevenson, Raymond	88
219	Stevenson, Sylvester	175
220	Sumner, Clarence E.	14
221	Taylor, Dennis M.	75
222	Taylor, Edward T.	52
223	Taylor, James	—
224	Taylor, Peter Nathaniel	286
225	Taylor, Simon	313
226	Terry, John	233
227	Terry, Junius	—
228	Tisdale, Larson	167
229	Townes, Harry, Jr.	221
230	Townes, Moses Zeb	212
231	Townes, Willie S.	307
232	Trevine, Roy	69
233	Travis, William H.	222
234	Twitty, Edward	289
235	Tuck, Robert Lee	96
236	Tucker, Benj. G., Jr.	10
237	Twisdale, Cephas L.	—
238	Walker, Jimmie L.	237
239	Wallace, W. E.	—
240	Ward, Bennie J.	288
241	Warrow, Randolph	231
242	Washington, Hayes	265
243	Watkins, Fred, Jr.	—
244	Watson, Robert	236
245	Whittley, James C.	272
246	Wiggins, William A.	102
247	Wilkins, Jessie	138

	Name	*Badge No.*
248	Williams, Charles	248
249	Williams, Charlie	239
250	Williams, Clinton	—
251	Williams, Earlie J.	94
252	Williams, Jimmie	258
253	Williams, Junious	158
254	Williams, John	84
255	Williams, John D.	38
256	Williams, Lewis T.	133
257	Williams, Melvin	—
258	Williams, Thurlon B.	327
259	Williams, Samuel	3300
260	Williamson, Lucius	—
261	Williamson, Millard	60
262	Wilson, Bobbie H.	29
263	Winston, Lee	147
264	Woodard, Charlie	255
265	Woody, B. B.	24
266	Woody, Robert	204
267	Wright, Milman	291
268	Young, Leroy	301
269	Yancey, Walter R.	—

STATEMENT.

To the best of our ability we have endeavored to alphabetically list the names contained in the foregoing two pages, for conformance only of the notice slips herein enclosed. If any are not alphabetized correctly they can possibly be identified if not by the name, then thru the badge number, if such badge number has been listed by the employee.

I hereby attest and affirm that separate notices, apparently by signature of the employee himself, are attached hereto in the number listed on the alphabetical list enclosed.

Cordell Holloman

Sworn to and subscribed to before me, this 21st day of January, 1953, in the City and State aforesaid.

W. J. Powell
Notary Public

My commission expires on Dec. 28, 1953.

EXHIBIT D-9

NORTH CAROLINA, VANCE COUNTY	IN THE SUPERIOR COURT

TUNGSTEN MINING CORPORATION

vs.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA; WILLIAM CORDELL HOLLOMAN; J. B. ROBERTSON, JR.; FRANCIS PATTON; GEORGE W. PENDLEY; RAY L. PATTERSON; JAMES C. KNIGHT; LUCIOUS WILLIAMSON; C. R. FISHER; JAMES JOURNIGAN; PERRY HAYES; HAROLD MITCHELL; WILLIE MITCHELL; AND ALL OTHER PERSONS TO WHOM NOTICE AND KNOWLEDGE OF THIS ACTION MAY COME.

TEMPORARY RESTRAINING ORDER

This cause coming on to be heard before the undersigned Clawson L. Williams, Judge Presiding, Third Judicial District, at Chambers in Henderson, North Carolina, upon the verified complaint filed by the plaintiff in this cause, treated as an affidavit; and it appearing to the court that action has been commenced by the plaintiff in the Superior Court of Vance County against the defendants above named, and that summons has been issued in said action against said defendants in which action the plaintiff seeks an injunction against certain acts of the defendants and others therein complained of;

And upon a consideration of said verified complaint treated as an affidavit, it appearing to the Court that the de-

fendants named herein and other persons unknown to the plaintiff, have committed and are committing unlawful acts upon and off the plaintiff's premises at Tungsten, North Carolina, and are unlawfully interfering with the conduct of the plaintiff's business and with free and lawful ingress and egress to and from the plaintiff's plant by employees of the plaintiff; and have threatened and are threatening to continue their unlawful conduct and to continue unlawfully interfering with the plaintiff in the use of its premises and the prosecution of its business, and to interfere with and molest persons rightfully entering upon the plaintiff's premises; and it appearing to the Court that the plaintiff is entitled to a temporary order restraining and enjoining the defendants from continuing their said unlawful acts and conduct; it is now, therefore,

ORDERED, ADJUDGED, and DECREED that the named defendants, and each of them, and all persons acting in concert with them or under their direction or the direction of any of them, and all other persons to whom notice and knowledge of this order may come, are, until the merits of this cause are determined; and until this Court orders otherwise, hereby enjoined and restrained as follows:

1. From interfering in any manner with free ingress and egress to and from the plaintiff's premises.

2. From assaulting, threatening, abusing, damaging the property of or in any manner intimidating persons who work or seek to work in or lawfully seek to enter, plaintiff's plant, whether on the plaintiff's premises or thoroughfares adjacent thereto, or away from said premises.

3. From assembling together in a motor vehicle or vehicles, and pursuing or following employees of plaintiff riding to and from their work at plaintiff's plant, wheth-

er on private roadways on plaintiff's property or on public highways leading to and from said plant.

4. From having more than six persons at any one time as peaceful pickets at any gate to the plaintiff's plant, provided that no person, including pickets, may approach closer to any gate or entrance to the plaintiff's plant than 100 feet, and provided further that no person or persons shall block driveways or walkways leading to the gates or other entrances to said plant; provided further there shall be no pickets except at the two main entrance gates to plaintiff's premises or plant.

It is the intent and purpose of this Paragraph 4 that no person, whether engaged in picketing or not, other than persons lawfully seeking to approach and enter the plaintiff's premises for the purpose of transacting lawful business or lawfully traveling along thoroughfares adjacent thereto, shall approach closer to any gate of plaintiff's plant than 100 feet.

5. No person shall abuse, intimidate, strike, threaten, or use any vile abusive, violent, or threatening language at or towards any person on the plaintiff's premises or any person entering or leaving said premises, or any employees of plaintiff anywhere, and shall in no manner interfere with or impede any motor vehicles, wagon, cart, truck, or animal, in approaching or leaving the plaintiff's premises, and shall in no manner interfere with the free ingress and egress of any person or vehicle or animal to or from the plaintiff's plant, or along and over any of the streets, roads, or walkways adjacent or leading to the plaintiff's plant.

The acts which persons are hereby enjoined and restrained from doing, they and each of them likewise are hereby enjoined and restrained from aiding or procuring or causing to be done.

This order shall become effective upon the plaintiff's filing with the Clerk of the Superior Court of Vance County a written undertaking with sufficient sureties justified before and approved by said Clerk in the amount of $2,000.00, guaranteeing to the amount specified that the plaintiff will pay to the defendants such damages as the defendants may sustain by the issuance of this order, in the event it may be finally determined by the Court that the plaintiff was not entitled thereto. It is further

ORDERED, ADJUDGED, and DECREED that the Sheriff of Vance County shall immediately post copies of this order in conspicuous places at and in the vicinity of the plaintiff's plant, and particularly at the entrance gates to said plant.

It is further ORDERED, that the defendants and each of them appear before the undersigned Judge of the Superior Court at the Court House in Halifax County, North Carolina, on Monday, February 2nd, 1953, at 11:00 o'clock a.m., or as soon thereafter as they may be heard, then and there to show cause, if any they may have, why this order should not be continued to the trial of this action on its merits.

This 14th day of January, 1953, at 5:05 p.m.

CLAWSON L. WILLIAMS,
Judge, Superior Court.

EXHIBIT D-10

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

REED JOHNSTON, Regional Director of the Eleventh Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner

vs.

TUNGSTEN LOCAL UNION, UNITED MINE WORKERS OF AMERICA, a recently organized labor organization consisting of Cordell Holloman and others, CORDELL HOLLOMAN, its agent, District 50, United Mine Workers of America, and ROBERT R. FOHL, its agent,

Respondents

Civil No. 670

DECREE

This cause came on to be heard upon the verified petition of Reed Johnston, Regional Director of the Eleventh Region of the National Labor Relations Board, on behalf of said Board, pursuant to Section 10 (1) of the National Labor Relations Act as amended, for an injunction pending final adjudication of the Board of the matters involved, and upon an order to show cause why injunctive relief as prayed should not be granted. The Court, upon consideration of the petition, respondents' oral answer thereto in open court, testimony, exhibits, evidence, oral arguments and briefs, duly made and entered its findings of fact and conclusions

of law. It appearing to the satisfaction of the Court that there is reasonable cause to believe that respondents have engaged in and are engaging in conduct in violation of Section 8 (b), sub-section (4) (C) of the said Act, and that such acts and conduct affect commerce within the meaning of Section 2, sub-sections (6) and (7) of the Act, NOW THEREFORE,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. That respondents Tungsten Local Union, United Mine Workers of America, a recently organized labor organization consisting of Cordell Holloman and others, Cordell Holloman, its agent, District 50, United Mine Workers of America, and Robert R. Fohl, its agent, and each of them, and their officers, representatives, agents, servants, employees, attorneys, members and all persons in active concert or participation with them, be and they hereby are restrained and enjoined, pending the final adjudication of this matter by the National Labor Relations Board, from:

Engaging in, or by picketing, order, instructions, directions, appeals, threats, intimidation, coercion or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, inducing or encouraging the employees of the Tungsten Mining Corporation, or of any other employer, to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, where an object thereof is to force or require the said Tungsten Mining Corporation to recognize or bargain with respondent Tungsten Local Union, United Mine Workers of America, and or respondent District 50, United Mine Workers of America, as the collective bargaining representative of any of the employees of said corporation in the unit

for which the United Stone and Allied Products Workers of America, C.I.O. has been duly certified by the Regional Director of the National Labor Relations Board as the exclusive bargaining representative under the provisions of Section 9 of the National Labor Relations Act.

2. Respondents shall forthwith notify all members of respondent Tungsten Local Union, United Mine Workers of America, by mailing letters to their respective last known places of residence and by posting notices for thirty days at all places where said respondent Tungsten Local Union conducts its business or where notices to its members are customarily posted, of the terms and provisions of this decree and directing that its members shall cease their strike and picketing at the mine and plant of the Tungsten Mining Corporation for the prescribed object above described, and that, pending final adjudication of this matter by the Board, all orders, instructions, directions, rules or regulations contrary to the terms of this decree are revoked, rescinded and withdrawn.

3. Respondents shall forthwith prepare a written press release stating that respondents have rescinded and withdrawn their demand that the Tungsten Mining Corporation shall recognize or bargain with respondents or any of them, and stating respondents' intention to comply with this decree and that respondents have directed their members to cease their strike and picketing at the mine and plant of the Tungsten Mining Corporation for the prescribed object above described. Respondents shall deliver signed copies of such press release for publication to the newspapers, radio stations and other media of news communication through which the respondents caused publication of their demands upon said corporation for recognition and bargaining and of the purposes and objects of the strike at the said corporation about January 12, 1953.

4. Respondents, and each of them, shall file with this Court, within thirty days after service of a copy of this decree upon them, a sworn statement showing in detail the steps taken by them to comply with this decree.

5. Jurisdiction of this cause is retained for the purpose of giving full effect to this decree, and for the purpose of making such further and other orders and decrees as may be necessary herein.

Done at Raleigh, North Carolina, this 3 day of February, 1953.

A true Copy, Teste:
A. Hand James, Clerk
By /s Keen Jones
Deputy Clerk.

/s DON GILLIAM, Judge
UNITED STATES DISTRICT JUDGE

To:

Honorable Don Gilliam, Judge United States District Court
For the Eastern District of North Carolina

From:

Tungsten Local Union, United Mine Workers of America, a recently organized labor organization consisting of Cordell Holloman and others, Cordell Holloman, its agent, District 50, United Mine Workers of America, and Robert R. Fohl, its agent,—Respondents in Civil No. 670.

On February 3, 1953, a Decree was entered against the above respondents, wherein Section 4 specifically read—

"Respondents, and each of them, shall file with this Court, within thirty days after service of a copy of this decree upon them, a sworn statement showing in detail the steps taken by them to comply with this decree."

Kindly be advised that the following steps were taken by the respondents to comply with this decree:

(a) Attached mimeographed notice and copy of decree was sent by first-class mail to Three Hundred Ninety-One (391) members of Tungsten Local, District 50, United Mine Workers of America; one copy to the Tungsten Mining Corporation; innumerable copies were posted at all places where the Tungsten Local Union conducted its business or where notices to its members are customarily posted, and copies were also delivered "for publication, to the newspapers, radio stations and other media of news communication through which the respondents caused publication of their demands upon said corporation for recognition and bargaining."

(b) A number of the first-class mimeographed copies of this notice and decree, which were mailed to the last known places of residence of our members, were returned. Where errors on our part were noted, these notices were remailed and as a last resort, a number of these letters were sent directly to the Tungsten Mining Corporation, Tungsten, North Carolina, with the request that they assist us in locating the individuals. A copy of the letter to the Tungsten Mining Corporation, which accompanied these letters is also attached, for your information.

The respondents immediately carried out the above after the decree was delivered to them, with the intent to comply fully with its terms.

/s/ Robert R. Fohl
Robert R. Fohl

/s/ Cordell Holloman
Cordell Holloman

Sworn to and subscribed before me this 3rd day of March, 1953.

/s/ W. J. Powell
Notary Public

My commission expires Dec. 26, 1953.

TO:

MEMBERS OF TUNGSTEN LOCAL, DISTRICT 50 UNITED MINE WORKERS OF AMERICA: TUNGSTEN MINING CORPORATION: FOR POSTING: AND FOR IMMEDIATE RELEASE TO THE PRESS AND RADIO

Notice is hereby given that on February 3, 1953, Judge Don Gilliam issued an order, a copy of which is herewith attached for your information and guidance.

Under the order District 50, UMWA, has no choice but to direct its members at Tungsten to "cease their strike and picketing at the mine and plant *** to force or require the said Tungsten Mining Corporation to recognize or bargain with *** Tungsten Local *** as the collective bargaining representative of any of the employees of said corporation in the unit for which" another union has been certified, which District 50 or its agents hereby does as directed. Under said order District 50 is commanded to withdraw its demand for recognition by the Corporation for collective bargaining purposes, which it likewise hereby does.

District 50, UMWA, intends to comply with the terms and conditions of this order or decree.

This 3rd day of February, 1953.

District 50, United Mine Workers of America

By /s/ Robert R. Fohl
Regional Director
/s/ Cordell Holloman

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF NORTH CAROLINA
RALEIGH DIVISION
CIVIL No. 742

TUNGSTEN MINING CORPORATION

vs.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA

ORDER

This cause coming on to be heard before The Honorable Don Gilliam, District Judge, upon Motion of defendant to strike out all of Paragraph 10 of the Complaint and the phrase of Paragraph 11 of the Complaint beginning after the word "alleged" in the second line thereof and ending before the word "production" in line three thereof, "and as determined by the National Labor Relations Board", for that the allegations contained in said Paragraphs as shown above are irrelevant, immaterial and improper, and that evidence in support of said allegations would be inadmissible, and the Court being of the opinion, and finding as a fact, that said allegations are irrelevant, immaterial and improper, and evidence in support of them would be inadmissible on the trial of said cause.

It is now, therefore, ORDERED, ADJUDGED and DECREED that the hereinbefore stated parts of the Complaint filed herein, be and the same are hereby stricken out.

It is further ORDERED that the defendant is hereby directed and ordered to file answer or other appropriate pleadings to said Complaint as modified by this order, in thirty (30) days from this date.

Done at Raleigh, North Carolina, this the 18th day of November, 1954.

/s/ Don Gilliam
District Judge

EXCERPTS OF ORAL TESTIMONY TAKEN FROM TRANSCRIPT OF EVIDENCE

(References are to pages and lines of transcript)

Testimony of Sam H. Scott

On page 10. Lines 6 through 25.

Q. And then sometime in December of '52 you entered into this agreement, the one you have introduced in evidence?

A. We negotiated the agreement in 1952 to become effective January 15, 1953.

Q. That was signed by Mr. Long and Mr. Sweet and Mr. B. B. Bailey. Who was Mr. Bailey?

A. Supervisor in some capacity.

Q. Those three men all represented the management?

A. Yes, sir.

Q. It is signed for your union by a man named J. B. Foreman, Administrator?

A. Yes.

Q. Who is he?

A. What the book says, J. B. Foreman, Administrator of the affairs of the local union and in behalf of United Stone and Allied Products Workers of America.

Q. Where is he from?

A. West Virginia.

Q. Was he employed by you?

A. Employed by United Stone and Allied Products Workers of

On page 11. Lines 1 through 25.

America.

Q. Had full authority to work for you?

A. Yes, sir.

Q. Is he here this morning?
A. No, sir.

Q. Administrator is something like executor?
A. I wouldn't say that.

Q. You have heard of an administrator being appointed for somebody dead?
A. Yes, sir.

Q. Your union was as dead as a doornail?
A. No.

Q. How many members did it have when this contract was negotiated by you and Mr. Foreman? So far as you are concerned we had none. You had them all.
A. We had a majority.

Q. Do you have the list you had?
A. I don't have them in my possession.

Q. Where are they?
A. I presume the company has checkoff list.

Q. The company kept your union record?
A. They have a record of checkoff and wouldn't have checked the dues off had they not been members.

Q. You, received notice of the United Mine Workers that they represented a majority of the workers?

On page 12. Lines 1 and 2, lines 6 through 17, and lines 20 through 25.

A. I don't recall. I don't dispute it.

Q. You know United Mine Workers had most of the members?

* * *

Q. Why did you appoint an administrator to come down and take over the affairs of your union?

A. They were a disgruntled group, causing a fuss, and under the terms of the constitution the executive board reserved that right.

Q. Your union was just about shot?

A. No.

Q. Every agreement that you ever had with Tungsten Mining Corporation up to this alleged agreement of January 15, 1953, which you say was entered into sometime in December, every one of those agreements was signed by a committee of local employees except this last one?

A. That's right.

* * *

Q. Why didn't any local employee sign this?

A. The Administrator has power to act for the local union, the International, officer of local unit, and therefore gave him power to do anything the local unit could do for stipulated time.

Q. He has so much power he can act in disregard of the wishes of local people.

On page 13. Line 1, lines 8 through 15.

A. He has power to act for local unit.

* * *

THE COURT: You asked him the question whether this man had the right to sign it regardless of the wishes of the members of the union?

MR. MAUPIN: Yes, sir.

A. My answer is yes, he has the right under the appointment as administrator.

Q. The administrator is all powerful in that local union?

A. For the duration of his reign.

* * *

On page 14. Lines 1 through 3.

Q. You say you were bargaining agent and Mr. Foreman was bargaining agent. What bargaining did you do with Mr. Long and Mr. Sweet?

A. I said Stone Workers were bargaining agent.

* * *

On page 15. Lines 13 through 16.

* * *

Q. You and Mr. Sweet and Mr. Long went to New York?

A. Mr. Long was in New York. I don't know whether Mr. Sweet was there on other business but I went to New York to meet our attorney with Mr. Long.

On page 16. Lines 3 through 6, lines 11 through 16, and lines 20 through 24.

* * *

Q. You say you there entered into negotiations for the contract?

A. No. We mentioned the contract, as to whether we could go into the terms of the contract and negotiations on the contract with the administrator.

* * *

Q. Who represented the workers?

A. J. B. Foreman and Sam Scott.

Q. Did you have a lawyer?

A. Yes, representing Mine Workers.

Q. What is the lawyer's name from Boston?

A. Sam Angoff.

* * *

Q. What rate of increase did the lawyers agree on?

A. They didn't agree on any increase. The length of the contract, the anniversary date of the contract which would come up January 15, 1953 was discussed, but wages worked out in the Tungsten office in Tungsten.

* * *

On page 17. Line 12, lines 14 and 15, and lines 18 through 25.

* * *

Q. Who paid your expenses to New York?

* * *

A. The United Stone and Allied Products Workers of America paid my expenses.

* * *

Q. While you were in the Astor Hotel in New York was one word said about the wage scale to go into this new contract?

A. I don't know that there was not and I don't know that there was. I know that nothing definitely was settled on it. Whether they said they would give a quarter of fifteen cents or twelve and a half cents I don't recall, but we did agree that negotiation of wages would be carried on at the Tungsten office or any other matters pertaining to contract.

* * *

On page 18. Line 25.

* * *

Q. Did a crisis exist in your union at Tungsten mine in the fall of '52?

On page 19. Lines 1 through 7, and lines 15 through 25.

A. Our international executive board felt it advisable to appoint an administrator.

Q. Things were so bad you had to send somebody to reign over the situation?

A. Administer over it, yes.

Q. With full power and authority to do anything.

* * *

Q. You knew at that time when you sent the administrator down there that the defendant in this case, or someone,

some other union had seventy-five or eighty percent of the employees signed up with them?

A. No, I did not.

Q. You had been told that?

A. I had no proof of it.

Q. Had you attempted to get any proof of it?

A. I had.

Q. Had you applied to the International Labor Relations Board to obtain proof for you?

On page 20. Lines 1 and 2 and lines 14 through 25.

A. No. I thought that was the duty of the organization that was intervening or claiming representation.

* * *

Q. I ask you if in the fall of 1952 George Pendley, Secretary and Treasurer of the Stone Workers, didn't write and tell you not to enter into any kind of a contract or do anything further in connection with Tungsten Mining Corporation?

A. Such a letter came from somebody at the mine but I am not sure whether it was Pendley or not.

Q. Pendley signed it?

A. I am not sure.

Q. You went to a meeting of the workers about that time and they booed you right out of the ball park?

A. No, sir.

Q. There was some booing done?

On page 21. Lines 1 through 18 and line 25.

A. Yes, sir.

Q. They apparently didn't want any more of you or your union?

A. No.

Q. How many at the meeting?
A. I would guess two hundred or two hundred and fifty.

Q. And you left the meeting?
A. I'm here. If I hadn't left I wouldn't have been here I don't suppose.

Q. You left as a result of the booing?
A. I left in due time.

Q. That was before the new contract?
A. I think it was.

THE COURT: Was that preparatory to making the contract which was in effect the day of the strike?

A. No, it was during the time of the contract that was in effect at the time of the strike. It was prior to making the contract after the strike took place. It was prior to the strike.

* * *

Q. Were you presiding?

On page 22. Line 1, lines 10 through 23.

A. No.

* * *

Q. It was after that meeting that you and Mr. Foreman ran up to New York to see Mr. Long?

A. It was some time after that. It was after that meeting that Mr. Foreman was appointed administrator. He was international representative of the Stone Workers. I might say we had another representative there and I am not sure which one presided, whether Mr. Foreman or Mr. Workham, but one or the other presided at that meeting.

THE COURT: What did these people do beside heckle you and Mr. Foreman?

A. That was all. The moment we started talking they started hollering.

Q. You could tell that part of the crowd was hostile?
A. Yes. . . .

Testimony of W. L. Long

On page 29. Lines 10 through 12.

* * *

Q. On account of the strike how many days did you lose in production?
A. About ten days.

* * *

On page 46. Lines 8 through 21 and lines 23 through 25.

* * *

Q. You had statement of Mr. Fohl that he had eighty percent signed up?
A. He told Mr. Sweet a substantial majority.

Q. Didn't he tell you he had eighty percent and would be willing to submit it.
A. I haven't seen him.

Q. You didn't call a mediator?
A. No, sir.

Q. You were determined not to deal with United Mine Workers?
A. I was determined not to with anybody unless certified in national labor.

Q. The reason you didn't deal with United Mine Workers was the fact they were not certified by National Labor Board?
A. That was part. . . .

Q. If you had had a hundred percent of your employees with all the signed statements they could bring to your office and they hadn't been certified by National Labor Relations Board you would

On page 47. Lines 1 through 9; lines 12 through 20.

not have dealt with them?

A. Not until decertified. The law requires us to deal with certified union.

Q. Now you say you had a meeting in New York and Mr. Foreman was there, that is the Czar or administrator of the dead union, or whatever kind of a union it was, he was there?

A. Yes.

Q. They told you nobody had to deal with you but Mr. Foreman, the administrator?

* * *

A. Yes.

Q. Then why did you call Sam Scott, the man you had been dealing with six or seven years?

A. To find out what was the legal position with respect to this administrator.

Q. Why was it necessary for Mr. Scott to go to New York if you were going to deal exclusively with Foreman?

A. I didn't decide to deal exclusively with Foreman until I was convinced that was my duty under the law.

* * *

On page 48. Lines 1 through 3, lines 6 through 9, and lines 16 through 25.

. . . Why didn't you call for an election?

A. No occasion to call for one. We had in our possession written statements of our people.

* * *

Q. Mr. Long, will you tell us that there was no discussion in New York about wage schedule you were expecting to enter into?

A. I don't recall any in respect to wage schedule. It was simply a question of the power of the administrator.

* * *

Q. Did you testify in the January 29, 1953 case in this court?

A. Yes.

Q. When did you resume capacity at that mine?

A. It came up gradually. . . . We lost ten days.

Q. What day did you get to normal operations?

A. Mr. Sweet can give you those things.

Q. Did you testify to that when you were here before?

A. Whatever I said there, and I was trying at least to say the truth, and if you will give me the record I will read it to you.

On page 49. Lines 1 through 4, lines 6 through 8, lines 14 through 25.

Best I knew at the time but I can't keep all these things in my head over this long period of time.

Q. You were asked at that time, "Has production been perfected at the mill?" on the 29 of January.

* * *

Q. Your mill never stopped operating?

A. Yes.

Q. How many days?

* * *

BY MR. GREEN:

Q. You had a stock pile?

A. Yes.

Q. You ever exhaust that?

A. I can't answer that but I think we did.

Q. What was your shipping that month in comparison with other months?

A. I don't know.

Q. Don't you know you continued just like if the strike wasn't there?

A. No, we lost a third of the normal production.

Q. I am talking about what you sold.

On page 50. Lines 1 through 10.

A. If we shipped more that month we shipped less the succeeding month. We can't make tungsten unless we grind it out of the rocks.

Q. You could use your stock pile?

A. Yes, sir.

Q. You never exhausted that?

A. I don't think so.

Q. No reason you couldn't go to that pile and keep on running. In your stock pile the only thing happened it depleted the stock pile but never exhausted it?

A. That's my recollection.

* * *

On page 51. Lines 1 through 12 and lines 19 through 21.

Q. Did you have any meetings in Vance Hotel with Mr. Scott during this period?

A. I think I did.

Q. Who was at that meeting?

A. Mr. Foreman, Mr. Scott, Mr. Sweet and myself, Mr. Swan and several men from the mine.

Q. Was that before the New York conference?

A. I think afterward.

Q. If you had full authority to deal with Mr. Foreman why did you have Mr. Pittman and the others there?

A. Because they were our people and who we wanted to satisfy and keep contented.

* * *

Q. You said, "We had them there because they were employees". Who were you talking about when you said "We had them there"?

A. I can't answer.

* * *

On page 52. Lines 18 through 25.

* * *

Q. Have another meeting in December, 1952?

A. Yes, sir.

Q. How many?

A. Two I know in my office. I think they had several with Mr. Sweet.

Q. The two in your office I will confine my remarks to. Who was present at those meetings?

A. Mr. Sweet, Mr. Bailey, myself, Foreman, Swan, Martin and Pittman.

On page 53. Line 1, and lines 20 through 25.

* * *

Q. Were you furnished a resolution in November and informed by the United Stone Workers that a crisis existed at your mill in respect to the labor situation?

A. I don't know to what you refer. Are you referring to Mr. Pendley?

Q. I will show it to you.

On page 54. Line 1, lines 3 through 6.

A. Yes, I was notified of that.

* * *

A. I was notified of the appointment of Mr. Foreman as administrator. I was given a copy of that resolution I think.

THE COURT: What is the date?

A. November 13, 1952.

* * *

Q. Did you post any notice on the board if they had any complaints and wanted a new election you would assist them in getting it?

A. No.

Q. You were aware United Mine Workers couldn't call an election?

On page 55. Lines 1 through 24.

A. I had knowledge they were trying to take over, but no success.

Q. You were informed they had eighty percent?

A. No. Mr. Sweet told me Mr. Fohl said they had the majority.

Q. Where were you on the afternoon of January 6, 1953 about three o'clock?

A. In Winston-Salem, National Labor Relations Board.

Q. Did you confer with Mr. Scott that day?

A. No, sir.

Q. The strike hadn't started. What were you doing there?

A. To talk with them about this siutation. We had heard they were going to strike January 15. I wanted to consult with them as to what we should do and how we should conduct ourselves. That is where I was when this strike took place, the time of the discharge of Holloman.

Q. Why did the strike take place on the 9 day of January?

A. I know they said they struck because of the discharge of Holloman.

Q. And who else?

A. Also struck for recognition of the union.

Q. Holloman and who else?

A. Knight.

Q. Were Holloman and Knight fired the day you were in Winston-Salem?

A. Yes.

* * *

On page 56. Line 25.

* * *

Q. You were expecting trouble and by firing the two men they had

On page 57. Lines 1 through 7 and line 18.

mussed up the plans.

A. I didn't want a strike. I didn't want then or any other day until I am dead for any man to be fired if it looks like it drawn inference he is being fired because of some labor activity on his part.

Q. Holloman was president?

A. They said he was.

. . . He had told them three times. . . .

* * *

On page 58. Lines 1 through 10 and lines 13 through 17.

CROSS EXAMINATION OF MR. W. L. LONG IS RESUMED:

Q. Mr. Long, during your examination yesterday something was said about having difficulty with some men who threatened you or assaulted you in some way, inviting you out of the car.

A. Yes.

Q. Who was that?

A. Charlie Brown.

Q. Your employee?

A. No, sir.

Q. You know for whom he worked?

* * *

A. I found he worked for Utah Construction Company.

Q. Did he assault you?
A. No, sir.

Q. You have any trouble with anyone else?
A. No.

* * *

On page 60. Lines 5 through 15 and lines 24 and 25.

* * *

Q. Paying dividends during those years?
A. No, sir.

Q. Ever pay any?
A. Yes, sir.

Q. Pay any during the year 1952?
A. No.

Q. In 1953?
A. No.

Q. Had you ever paid any up to that time?
A. No.

Q. Was the mill ever closed down?

* * *

Q. I believe you testified on the 29 day of January you had arrived at normal production in the mill. Is that correct?

On page 61. Lines 1 and 2, lines 6 through 11, and lines 22 through 25.

A. We had arrived at full operation. I don't recall whether we had arrived at normal production.

. . . Yes, sir. I said we had been operating the mill at normal production but the mine had been slowly getting back to production and "has not reached production from rock underground."

Q. And you had never completely consumed your stock pile?

A. That is my recollection.

* * *

RE-CROSS EXAMINATION OF MR. W. L. LONG:

Q. This matter was brought to the attention of the assistant manager and the assistant manager told them "So far as I know you are fired"?

A. That's true.

Testimony of C. R. Williams

On page 63. Lines 15 through 21.

* * *

Q. What union?

OBJECTION BY DEFENDANT OVERRULED.

THE COURT: You say they were represented to you as representatives of the striking crowd. Who represented them?

A. The pickets told us that.

Q. You don't know who they were?

A. No, sir, just a crowd of men picketing the front gate.

* * *

On page 73. Lines 12 through 19.

* * *

CROSS EXAMINATION OF CAPT. C. R. WILLIAMS BY MR. GREEN:

Q. Captain, you saw Mr. Wood and Mr. Robinson at the mine on this particular night when you first got there?

A. A Short while after I got there.

Q. And you solicited their aid and support in maintaining order?

A. Yes, sir.

Q. They cooperated with you in every way?
A. Yes, sir.

* * *

Testimony of James R. Sweet

On page 99. Lines 22 through 25.

* * *

CROSS EXAMINATION OF MR. JAS. R. SWEET BY MR. ARENDELL:

Q. Mr. Sweet, the contract between you and your company and Stone Workers in existence during the fall of 1952 contained a sixty day clause didn't it by which you or the union could terminate

On page 100. Lines 1 through 25.

the contract on sixty days notice?
A. Yes, sir.

Q. That contract to expire at midnight January 14, 1953.
A. I am not certain. I think it was January 15, 1953.

Q. And if either you or the union desired another contract all you had to do was to give the other sixty days notice you didn't want to renew it another year from January 15, 1953?
A. I think that's right.

Q. Now, you testified that on October 16, 1952 Messrs. Fohl, Shuey and Wood came to see you at your office on the mill property.
A. Yes, sir.

Q. And Mr. Fohl said, "This is a courtesy call".
A. That's right.

Q. And they were courteous during your interview?
A. That's right.

Q. And they told you they had a substantial majority of your employees signed up in the United Mine Workers, District 50?

A. Yes, sir. I am not so sure about the word "substantial" but they certainly used the word "majority".

Q. Did you ask to see the cards by which they claimed a majority of signups?

A. No, and neither did he show them to me.

Q. He explained to you that District 50 didn't use the facilities of the National Labor Relations Board?

A. Said they would not.

On page 101. Lines 1 through 21.

Q. And you knew why?

A. I had a general understanding why they wouldn't as of that time.

Q. During that conference on October 16 Mr. Fohl, or Mr. Shuey, or Mr. Wood suggested to you that in order to determine that majority they would be perfectly willing, not using the National Labor Relations Board procedure, to leave it with a federal mediator or state conciliator of state labor.

A. They advised me they could use either one.

Q. Did you take them up on either one?

A. No, sir.

Q. Did they suggest to you a third course, that you could get a committee of ministers of the Gospel and determine whether or not they had a majority signed up?

A. I don't recall whether they did or not.

Q. Your socalled checkoffs which you had in your possession from your employees were for the life of your bargaining contract only, is that right?

A. I would say they were in existence then and were current and I recognized them as being checkoff members of the union at that time.

On page 102. Lines 2 through 7 and lines 14 through 16.

* * *

Q. You didn't inquire as to whether or not these gentlemen had the withdrawals of those checkoffs signed by your employees, a majority of them?

A. No, I didn't.

Q. You testified they could withdraw them at any time?

A. Yes, that's right.

* * *

Q. And you were unwilling to take any steps towards de-certification of Stone Workers regardless of the wishes of your workers?

A. The question didn't arise.

Q. Didn't it arise when these gentlemen told you they had a majority?

A. I didn't believe they were properly informed. . . .

One page 103. Lines 3 through 25.

* * *

Q. Following your conference with those gentlemen you had an exchange of letters with Mr. Fohl?

A. That's right.

Q. And you identified those letters this morning?

A. Yes, sir.

Q. October 16 was more than sixty days from January 15, 1953, wasn't it?

A. That's right.

THE COURT: Was that the date of the visit of Mr. Fohl and the other two?

MR. ARENDELL: Yes, sir, October 16.

Q. The day after this conference of Messrs. Fohl, Shuey and Wood in your office, October 16, 1952, Mr. Fohl wrote you a letter which you identified?

A. That's right.

Q. And in that letter didn't he say this: "Mr. Sweet, kindly be advised that a substantial majority of your production and maintenance workers are members of United Mine Workers of America and we are herewith requesting conference with you for the purpose of discussing the matters relative thereto, as well as wages, hours and working conditions. This also confirms a personal visit of_____ I would appreciate receiving from you any suggestions leading towards an amicable solution and settlement

On page 104. Lines 1 through 8.

of all issues involved. Fraternally yours, Robert R. Fohl." You got that letter?

A. Yes, sir.

Q. You consulted with Mr. Long about this visit of October 16 and this letter of October 17?

A. Yes.

Q. You considered Mr. Long your immediate superior?

A. Yes.

* * *

On page 105. Lines 5 through 15.

Q. After conferring with Mr. Long you wrote a letter on October 21, 1952 addressed to Mr. Fohl in which you stated, "I have your letter of the 17th and beg to advise that I can see no basis for any conference between us. After the election United Stone and Allied Products Workers of America was certified to us by the National Labor Relations Board as bargaining agent for our employees. This certification has never been rescinded and we will continue to recognize it until some other bargaining agent has been properly certified to us after another election duly held under the National Labor Relations Act. Yours very truly."

A. Yes, sir.

* * *

Q. On that date, October 21, 1952 you posted notice notifying your employees, posted it on the bulletin boards and put it in the pay envelopes, that United Mine Workers had written you they had a majority of members and requested conference and told them you declined to meet with them, "and will not meet with them or any other union to discuss these matters until—" (Counsel reads "P-10")

On page 106. Lines 1 and 2, lines 4 through 9.

You put that on the bulletin board and gave a copy to each employee?

A. I did.

Q. But you were never willing for a secret ballot to be taken to test whether or not majority of your employees wanted Stone Workers or District 50?

A. That's right.

Q. And you stuck to that position?

A. Yes.

* * *

On page 107. Lines 21 through 25.

* * *

Q. What date was it that you and Mr. Long and Mr. Sam Scott, Mr. J. B. Foreman and the Boston union lawyer were in New York?

A. What particular day it was I don't recall. I was up there at a stockholders meeting in the early part of December.

Q. It was before the 18 of December?

On page 108. Lines 1 through 5 and lines 17 through 25.

A. Yes, sir.

Q. And in that conversation, which I believe you or Mr. Long stated was held in the Astor Hotel, there was

present the Boston lawyer for Stone Workers, Mr. Long, you, Mr. Scott and Mr. Foreman.

A. Yes, I believe that is right.

* * *

Q. When you left New York and closed the conference were you satisfied the administrator could act for International, Stone Workers?

A. Yes.

Q. Anything else discussed in New York at that meeting?

A. May have discussed with Mr. Scott the question of vacations which had been carried over from the meeting or negotiation in May, 1952.

Q. Anything else discussed at the meeting?

On page 109. Lines 1 through 3 and lines 6 through 25.

A. Not that I recall.

Q. What about wages?

A. No, sir.

* * *

Q. Now, Mr. Sweet, on or about November 14, 1952 did you get a letter from George W. Pendley, Recording Secretary Local Branch 98 of Stone Workers, asking you not to enter into the new Contract with Stone Workers?

A. I received a letter, I think. Was that addressed to me?

Q. You identified it this morning, or a copy of it.

A. I think so.

Q. Did you get a registered letter November 14 from Mr. Pendley, of which this is a copy?

A. Yes, I recognize the letter and I presume I got it in due course of mail about November 14.

The letter dated November 13, 1952 is identified as "D-1"

Q. Mr. Pendley was one of your employees?
A. Yes, sir.

Q. This letter was signed by three other of your employees wasn't it?
A. Signed by three, I think all employees of the company.

THE COURT: Did you reply to this letter?

A. No, sir.

Q. Did you know Pendley?
A. I knew Pendley. I didn't know him as the official Pendley.

Q. Ever hear he was recording secretary of the Local?
A. No, sir. I had no advice to that effect.

Q. Did the other employees sign as officials?

MR. ARENDELL: No, sir, they just signed as employees. We don't have the original. The letter in question from Mr. Pendley was signed by Cordell Holloman, Paul D. Gentry and R. H. Harris.

THE COURT: You knew Mr. Holloman?

A. Yes, sir.

Q. Know him as an official of the Local?
A. No, sir.

Q. Is he the one who was president?
A. He was elected president but I didn't ever know him as an official of Stone Workers.

* * *

BY MR. ARENDELL:

Q. After receiving this letter on November 14, 1952 signed by George W. Pendley, Recording Secretary Local

98 of Stone Workers, the next day did you receive a letter from J. B. Foreman, or the

On page 111. Lines 1 through 13 and line 25.

day after, on Stone Workers stationery?

A. Yes, sir.

Q. Do you have a letter like that?

A. I received the letter. I don't have the letter here.

Q. Copy of letter from J. B. Foreman dated November 14, 1952 addressed to Tungsten Mining Corporation is marked for identification "D-2"

Q. Within the course of 48 hours you received a letter from George W. Pendley notifying your company not to renew this contract and another letter from J. B. Foreman, Administrator of the Union, asking you not to renew the contract but to make some major changes in it?

A. Yes, sir.

* * *

Q. Mr. George Pendley wrote you as recording secretary not to

On page 112. Lines 1 through 4.

renew any contracts?

A. Yes, sir.

Q. Was Mr. Card an employee of yours?

A. Later made a shipping boss.

On page 113. Lines 1 and 2.

Q. You did nothing up to this point to test out whether or not Mr. Fohl's claim of having a majority for District 50 was true?

* * *

On page 114-A. Lines 2 through 12.

* * *

Q. Will you deny on January 9, 1953 that you knew Holloman was president and Jimmie Knight was secretary of the new Local?

A. I don't know whether I knew it or not on January 9.

THE COURT: When you say "know" what do you mean?

Q. Had you heard that Holloman was president and Knight was secretary of that new Local?

OBJECTION BY PLAINTIFF.

THE COURT: Had you heard it on January 9 that Holloman was president and Knight was recording secretary?

A. Best of my impression I think I would have to answer yes. . . .

On page 118. Lines 15 through 25.

* * *

Q. You have every detail fixed in your mind as to this incident when those two men were fired.

A. Report submitted to me sometime or other and after the incident by the mine superintendent.

Q. You have a censor over there. When did you first know that Roberts, or whoever it was, had fired Holloman and Knight?

A. Some time Friday evening. The evening of January 9.

Q. Where were you?

A. I was in Raleigh I believe when advised indirectly by phone that there was a strike at the mine. I was with Mr. Long and we went out to the mine and there one way or another I was given

On page 119. Lines 1 through 3 and lines 21 through 25.

information in regard to the strike.

Q. About nine o'clock at night?
A. Nine or half past eight.

* * *

Q. Where did you and Mr. Long get the idea there was going to be a strike on January 15?
A. I heard there was going to be a strike on the 14 of January, on the 15th, but I was going to have a delegation of United Mine Workers come to see me and tell me if I didn't go along with them

On page 120. Lines 1 and 2.

they were going to strike, and I had rumor of a strike in November and December, up until there was a strike.

* * *

On page 123. Lines 13 through 25.

* * *

Q. In your complaint you said you had suffered damages for failure to produce and deliver Tungsten to your customers and depletion of stock pile in at least the sum of $200,000.00?
A. That's right.

Q. You have reduced that down about $110,000?
A. $83,000.00.

Q. Does your $117,000 include these extra items, $27,031.76?
A. Yes.

Q. In your complaint your damages for failure to produce and deliver Tungsten you set at $200,000 and you add to that the $27,000?
A. That's right.

Q. So instead of $200,000 you revise that to 90,000?

On page 124. Line 1.

A. Yes, sir.

* * *

On page 125. Lines 7 and 8.

* * *

Q. So you never completely exhausted your stock pile?
A. That's right.

* * *

On page 128. Lines 5 through 16.

* * *

Q. Now with regard to the items which make up $72,031.76. You have alleged damages against this defendant of $12,420.96 for hire of guards on a decreasing scale through June, 1953.
A. Yes.

Q. The strike ended on February 3, 1953 with the posting of the injunction issued out of this Court?
A. That's right.

Q. And District 50 left, so far as you know, and the strike stopped.
A. The notice was posted and the Court handed down its decision.

Q. The strike stopped February 3?
A. Yes.

On page 133. Lines 9 through 14 and lines 24 and 25.

* * *

Q. Did you ever request state or county authorities for police protection during the strike?
A. We asked State Patrol for protection to keep the roads open.

Q. Ask state or county authorities for police protection to your property?
A. No.

* * *

Q. When Judge Williams signed his restraining order on January 14 and it was posted out there he didn't have but six by the gate?

On page 134. Lines 1 through 4.

A. 100 feet from the gate.

Q. They observed that section of the restraining order and got 100 feet away all but the six?

A. Yes.

* * *

On page 136. Lines 23 through 25.

* * *

Q. These damages you paid for the employees' cars was voluntary act?

A. Some of them damaged in our parking lots and they came to us

On page 137. Lines 1 through 8 and lines 22 through 25.

and asked us if we could pay for those cars that were damaged during the course of this strike.

Q. You did that voluntarily?

A. Yes.

Q. Nobody forced you to?

A. No. We were not forced by any agency to do it.

Q. Did you see them damaged?

A. No, I did not.

* * *

THE COURT: I believe I would have to eliminate that. I would say eliminating pay to guards after the strike was over, I am not sure about the others, but eliminating everything but the time when the strike was in progress, hiring of guards, maintenance of

On page 138. Lines 1 through 9.

guard house, purchase of pistols and holsters, less the value of them now, bus fares, taxi fares, photography of strikers, spot radio announcer, newspaper advertisement,

those items, and also maintaining home office in Henderson, payment to Utah, additional office help, increase in payroll taxes and compensation insurance, made necessary by guards, etc., certainly for the duration of the strike. I would think miscellaneous expense would have to be itemized, but generally speaking I think those things I mentioned would be recoverable items.

* * *

On page 142. Lines 1 through 4.

Q. Did you ever know of any District 50 representative advising or requesting some Utah Construction workers not to go across there and work?

A. No.

* * *

On page 143. Lines 23 through 25.

* * *

Q. . . . Did you ask for or receive from the state or Vance County any police protection for your own property?

On page 144. Line 1.

A. No.

* * *

On page 145. Lines 21 through 24.

* * *

THE COURT: On January 10 were they working full time?

A. No, sir.

Q. Up until the time of the strike?

A. Yes, sir.

* * *

On page 150. Line 25.

* * *

Q. Is there anything in the contract which requires you to pay

On page 151. Lines 1 through 4.

to Utah any sums of money because of their not working, which condition is attributable to strikes on the part of your employees?

A. I don't think you will find that specifically stated in the contract. . . .

* * *

On page 152. Lines 1 through 3 and lines 18 through 21.

A. The gates were open all the time.

Q. And Utah people could have come through if they had wanted to during the strike?

* * *

Q. Tell us one instance when an employee of Utah had any trouble in attempting to go to work?

A. To the best of my knowledge they didn't have any trouble and didn't go to work until we had it in order.

* * *

On page 155. Lines 18 through 25.

* * *

MOTION BY DEFENANT TO STRIKE ALL TESTIMONY IN REGARD TO THE UTAH CLAIM. THE MOTION IS DENIED.

THE COURT: You say you don't know whether Utah paid these men for the same time you paid them for?

A. Yes, sir.

Q. You paid Utah. You don't know whether they paid the men or not?

A. No, sir. Say a man kept on the job ten days and no

On page 156. Lines 1 through 4.

work. I don't know whether they paid each individual man full scale those ten days. I talked to the man and asked him what he was doing during this period of time and his reply, "I don't know."

* * *

On page 158. Lines 22 and 23.

* * *

Q. You paid Utah employees for the time they didn't work?

A. Yes.

* * *

On page 160. Line 25.

* * *

Q. . . . Do you have for us the figures

On page 161. Lines 1 through 19.

you were requested yesterday to bring this morning, the units you produced during the calendar year 1952 and the first two months of 1953?

A. You want January, 1952?

Q. Yes, the units.

A. January, 5142.90; February 5504.11; March 5053.04; April 4971.58; May 5651.80; June 5214.82; July 6023.05; August 5480.31; September 6687.46; October 7502.89; November 7586.95; December 10,138.41; January, 1953, 7471.14; February, 1953, 9452.64.

Q. Now let's have your income for those months, the net income.

A. After depreciation and depletions?

Q. Yes.

A. January, 1952, $19,878.58. I might state that the provision for Federal and State income taxes must necessarily be an estimated figure. February, $33,740.70; March $24,350.51; April, $17,751.23; May $29,850.49; June $25,231.19; July $39,450.74; August $27,096.03; September $40,872.17; October $45,388.19; November $30,396.19; December $78,457.91; January, 1953 $33,559.22; February, 1953 $48,653.99.

* * *

On page 163. Lines 23 through 25.

* * *

Q. For a week you didn't produce any from the mine but used what you had surplus in the mill?

A. The hoisting at the mine from January 10 to the 16th inclusive

On page 164. Line 1 and lines 13 through 20.

my record shows we didn't hoist any tons at all.

* * *

Q. Is this statement correct and was it correct on January 29, 1953 that you were "operating the mill at normal production but the mine has been slowly coming back up and has not reached production from rock underground"?

A. During the latter part of January there were days we had reached a normal, if you want to call it, or near normal rate of production, but there was other work that was not done in the mill at that time which had to be done in later months.

* * *

On page 168. Lines 17 through 25.

* * *

Q. Now, Mr. Sweet, your depletion allowance in 1952 and the first part of 1953 was fifteen percent. You got that by way of tax reduction.

A. I think we took off fifteen percent.

Q. In charging the $90,000 alleged damages against the defendant you have taken that in consideration as profit?

A. We took the gross revenue for six months and deducted operating expenses.

Q. Including the 15% depletion allowance?

On page 169. Line 1 and lines 20 through 25.

A. Yes, sir.

* * *

Q. Was there any limitation on the amount you could produce with the protection of that guaranteed price?

A. Nothing that would become operative within that period of time.

Q. That guaranteed price was to expire in 1958, or when you reached so many units, whichever came earlier?

On page 170. Lines 1 through 5.

A. Yes, three million units.

Q. You haven't reached the maximum number of units?

A. No.

Q. When will you reach it?

A. My estimate is sometime the middle of this year.

* * *

On page 171. Lines 1 through 7.

Q. Did you refuse to hire any of your employees back when they presented themselves after the strike?

A. There may have been some of the employees we refused to take on.

Q. But after you got your full complement following the strike there were a great many more new ones than there were old ones?

A. Yes.

* * *

On page 178. Lines 1 through 13.

RE-CROSS EXAMINATION OF MR. J. S. R. SWEET:

Q. You stated that you produced in January, 1953 7471 units. In February you produced 9452 units.

A. Yes.

Q. In March you produced 10,519 units?

A. Yes.

Q. How many in April?

A. 11,255.73.

Q. That was the most ever, most units ever produced in the history?

A. Yes.

Q. And the next highest in the history of the company was March, 1953, 10,519?

A. I think that exceeds December.

* * *

Testimony of W. L. Long

On page 181. Lines 3 through 11 and lines 16 through 25.

* * *

Q. Mr. Sweet has been questioned about the situation with regard to Utah Construction Company and arrangements you had. Will you explain that to the Court, what happened during the strike, and why their laborers were kept on and paid by you?

A. I was very insistent that Utah Construction Company go on with their work. I was very much disappointed that they didn't go ahead and work, so much so I got very vehement about it. I told Mr. Laird I thought he ought to go ahead and do the work or cancel the contract.

* * *

A. I did my best to get them to continue their work notwithstanding the strike. They refused because the men didn't want to cross the picket line and were afraid to go to work. I finally decided the better thing to do was let them stand by and we pay the cost rather than cancel the contract and go to the expense of re-assembling these people from all over the world. We pay the cost so they could stand by and later go to work. He would minimize the cost as much as he could.

Q. That is what you did?

A. Yes, sir.

On page 182. Lines 17 through 25.

* * *

OBJECTION BY DEFENDANT OVERRULED.

. . . I don't care anything about this Utah thing. Throw it out. The thing is we were unlawfully interfered with in the prosecution of our work and we suffered damage. I don't care anything about how much damage. I want our rights vindicated and want unions to know they can't come in and cause strikes and go scot free when there is a solemn contract.

RE-CROSS EXAMINATION BY MR. GREEN:

Q. You say you are not here in this lawsuit to get damage but

On page 183. Lines 1 through 9.

vindication?

A. I want to get some damages to show your client engaged in an unlawful action and caused us the damage but the amount I am not concerned with.

Q. You are willing to throw Utah Construction Company out of the window and forget about it?

A. Yes.

Q. That is what you say?

A. Yes.

* * *

On page 184. Lines 16 and 17.

* * *

Q. You don't know what this te, thousand dollars represents?

A. No, I don't.

* * *

Testimony of B. B. Bailey

On page 186. Lines 17 through 23.

* * *

CROSS EXAMINATION OF MR. B. B. BAILEY BY MR. MAUPIN:

Q. You say a man named Williamson struck you?

A. Yes, sir.

Q. He was at that time an employee of Utah Construction Company?

A. I couldn't say.

Q. He was not an employee of the mine?

A. He was not.

* * *

On page 187. Lines 18 through 20.

* * *

Q. You saw him more than one time after he was pointed out to you?

A. I wouldn't swear to that.

* * *

Testimony of L. R. McClelland

On page 191. Lines 9 through 18.

* * *

CROSS-EXAMINATION OF MR. L. R. McCLELLAND: BY MR. GREEN:

Q. What day of the month are you talking about?

A. January 9.

Q. Do you know why they were striking?

A. Nothing more than I heard them talking.

Q. Did you know about the two boys being dismissed that day?

A. Not until I went up there I didn't.

Q. Hear them talking about that?

A. Yes, heard them say that was why the strike was pulled that evening.

* * *

Testimony of Robert R. Fohl

On page 192. Lines 2 through 25.

* * *

DIRECT EXAMINATION BY MR. MAUPIN:

Q. State your name and address.

A. Robert R. Fohl, 5701 Bromley Lane, Richmond, Virginia, Regional Director Region 19, District 50.

Q. Did you hold that position in the fall and winter of 1952 and '53?

A. I did.

Q. During the year 1952 were you approached by any employees or employer of Tungsten Mining Corporation with the idea of forming a union in that corporation?

A. I personally was not contacted but representatives of our organization were contacted by an employee acting for the employees of that company.

Q. As a result of that contact was any effort made to organize the workers of Tungsten Mining Corporation?

A. Yes.

Q. What was done?

A. Actually I was attending Mine Workers convention in Cincinnati and Frank Lumpkin, official secretary of the local at Hercules Powder was a relative of Cordell Holloman, had visited him, and told him what union they had. Apparently the men felt they would like to change and—

OBJECTION BY PLAINTIFF OVERRULED.

he contacted Mr. Lumpkin and found out about Mr. Shuey who certified

On page 193. Lines 1 through 25.

Mr. Lumpkins' local.

Q. Who is he?

A. Secretary and treasurer of Hercules Powder at Hopewell. Mr. Shuey contacted Mr. Holloman, found it

to be true, visited his home in North Carolina; gave Mr. Holloman application cards and from there on the efforts of the employees were on their own to carry out what they wished in that regard.

Q. As a result of this effort were any application cards ever delivered to you?

A. Yes, they were.

Q. Were those application cards application for membership in District 50?

A. They were.

Q. Did they also contain a checkoff authorization?

A. Combination membership and checkoff cards.

Q. At the same time were there also delivered to you certain slips reading as follows: "I hereby wish to sever all relations with United Stone and Allied Products Workers of America and request it no longer be the certified bargaining agent at Tungsten Mining Corporation, Tungsten, North Carolina"?

A. They were along with two additional slips at the top of that type of card you just read.

Q. What was the nature of those other slips?

A. To revoke checkoff cards of the existing union then in the plant.

On page 194. Lines 1 through 5 and lines 23 through 25.

Q. What was the existing union in the plant?

A. Stone Workers.

Q. Did you furnish Stone Workers with a copy of those cards?

A. We had them available for either them or the company. If they had told us that would have resolved the situation.

* * *

BY MR. MAUPIN:

Q. Was it your information that only employees signed these cards?

OBJECTION BY PLAINTIFF OVERRULED.

On page 195. Lines 1 through 25.

A. Yes, sir.

MR. MAUPIN: They were present and available to be checked by anybody in the fall of 1952.

Q. Will you identify these?

A. Yes, sir, they are the cards we had available at the time we were asking the company to recognize this organization.

The cards just identified are marked for identification "D-5".

Q. What is this?

A. Statement by the workers who were members of Stone Workers, and I might say the reason for the difference, 269, there were many people who signed our membership cards who were not members but those who were members also signed these and made statement, "I hereby wish to sever all relations with United Stone and Allied Products Workers".

OBJECTION BY PLAINTIFF.

Q. Just say in effect what that bunch purports to be?

A. Severing of relations with Stone Workers.

Q. Were they available to Mr. Sweet or other officials of the company in October?

A. Yes, sir.

Q. Did you tell Mr. Sweet he could call on a committee of ministers, or labor conciliator of North Carolina, or mediator to examine these checkoffs?

A. I did. I am not sure of the date but the day we called on Mr. Sweet, which I believe was the 16th. Mr. Shuey and I came down

On page 196. Lines 1 through 25.

from Richmond and Hopewell and called on Mr. Holloman at his house, knowing it was arriving at the sixty day notice you should give a company not to renew a contract, if the men wanted some assistance we would like to find it out, and we called on him at his home. We went from Mr. Holloman's house. Mr. Shuey, Mr. Wood and I and said we will call on Mr. Sweet directly, sit down and try to explain the situation, how we operate and how we go about solving this problem. Mr. Holloman didn't go with us but we had his cards with us. We called on the mine office and asked if Mr. Sweet was in. I believe at the time we didn't possibly identify ourselves. He came out and greeted us. We introduced ourselves. He asked us in his office. I think as Mr. Sweet testified, the first thing I usually tell a gentleman is it is a courtesy call, and we did in that instance, and that the meeting with him was entirely to explain our position, many avenues to resolve in his mind, that we represented them, we didn't want to waste his time, that we did have a very substantial majority, practically everybody in the mine signed up. Told him in many instances in North Carolina we are continually organizing and facing these problems, what the company will do has to be voluntarily, use the North Carolina Department of Industry. We have used them many times. He could check the cards. We preferred an impartial man do it. We didn't want any of our people to be discharged. We told him it could be the North Carolina State Department of Labor and Industry. We said it could be some ministers, and outlined the procedure he

On page 197. Lines 1 through 10 and lines 21 through 25.

could go about to verify the cards we told him we had in our possession. Mr. Sweet,—I don't think we could have expected him to have said too much at that stage,—we didn't advise him we were coming ahead of time and he didn't indicate one way or another what he would do. I told him we were anxious to meet, our time was at his disposal, that I would confirm our visit by letter the next day, which I did, and that we held ourselves in readiness to present positive proof that those people wanted our organization.

Q. Did you have positive proof?
A. Yes, sir, we definitely did.

* * *

. . . We had practically everybody in that plant signed from the indication we had of the number of people working.

BY MR. MAUPIN:

Q. Why didn't you give those to Mr. Sweet?

On page 198. Lines 1 through 25.

A. We don't and the company doesn't expect us to hand the cards to them. It is usually done through a disinterested person.

THE COURT: It is perfectly understandable to me.

Q. You say there was a third set of cards?
A. Yes, sir.

Q. What did they indicate?
A. A mimeograph in three sections, one to the CIO Union and one to Tungsten Mining Corporation. They were notices to both of those people cancelling the checkoff card then in effect.

Q. Did you subsequently furnish C.I.O. Union with their part of that sheet?

A. If I can explain it. Usually when we reach a point where we are trying to work out the question who is the union, sometime the company may ask and raise this question, that is that they have checkoff cards. If they will say that is all troubling them we have available the withdrawals of the checkoff cards. We were just as reluctant to present them,—we think they could be discharged from them. After the stoppage of these workers from these discharges and consulting with the workers they felt any reason for discharge has evaporated and ask to go ahead and send them in. I think eight or ten may have gone in the plant and the others had said send them on in anyway.

Q. What did you finally do with the other union cards?

A. They were sent both to Stone Workers and to the company.

Q. What is that?

On page 199. Lines 1 through 25.

A. The withdrawals of the checkoffs while the stoppage by the workers was in progress. There were separate slips, both of them identical in looks to those white slips. These were the members of Stone Workers that signed those withdrawals and checkoff cards, copy of the withdrawals, one set sent to C.I.O. and one set sent to Tungsten Mining Company.

THE COURT: When?

A. During the progress of the stoppage.

Q. After the strike?

A. Yes, sir, but for the reasons I outlined.

BY MR. MAUPIN:

Q. Had you furnished the company and C.I.O. a list of the employees with their badge number who had signed these white slips?

A. Yes, sir. That list you have is a list of the withdrawal slips that went to both the company and Stone Workers and was notarized.

Q. Is this a copy of the notarization?

A. Yes, sir.

Severence cards marked for identification "D-5".

List of workers signing withdrawal slips marked for identification "D-6".

Q. When did you first hear of the strike at Tungsten Mining Corporation?

A. It was late the night of January 9 that I had heard that a strike had occurred at that plant.

On page 200. Lines 1 through 25.

Q. Who informed you?

A. I think it was Mr. Wood.

Q. Did you have anything to do with the calling of the strike?

A. Absolutely none.

Q. Did you know it was going to be called?

A. I did not.

Q. Have you ever authorized or suggested or urged such a thing?

A. No, sir.

Q. Did you ever authorize anybody under you and in your employ to go there and start a strike?

A. To the contrary when we heard the two men had been discharged I advised them there should be no strike and

advised the men involved to handle it with the company who had contract until January 15 to run.

THE COURT: Didn't Mr. Shuey have authority to call a strike?

A. Mr. Shuey was nowhere in the vicinity of Tungsten mine. This, as well as anything in life, is a matter of bargaining, and a strike can occur in any collective bargaining situation. It doesn't mean it is called. We had hoped that the matter would be resolved. We have never called the strike and I and others may have intimated it could occur but we certainly didn't mean we did or would have. In this instance when the men were discharged, when I first heard about it, Mr. Wood

On page 201. Lines 1 through 25.

checked with me as to what to do. Mr. Wood was staff representative at that time in Raleigh and naturally was the closest man. He has no authority to call a strike without first checking it with his superiors. He did check with me and I advised him what to do. I told him that those men should respect the existing agreement that company had even if with a defunct union and go in and talk with the company about what procedure to operate until January 15. In this organization I know Mr. Lewis and everybody on down would respect contracts. It was my advice to talk to those men who had until January 16, prior to the expiration of that notice not to renew it. We felt they had to live under that agreement until January 15. I advised Mr. Wood and know that he advised those men.

Q. How do you suppose it got out of hand?

A. I think Tungsten Mining Company can answer that. They merely came to us as a client to a lawyer. We had to help people. We couldn't turn our back on them. We were concerned when they walked out that they didn't implicate us because we were not going to be a party to the strike

under those circumstances. We felt the company should adjust those charges under the contract.

Q. You were not in favor of the strike for firing the men or refusal to bargain with you?

A. I had never come to a decision. I consult my superiors. I was frankly surprised when I got a call from Mr. Wood about

On page 202. Lines 1 through 25.

it. I was not prepared mentally or otherwise. What would happen January 15 I didn't know. I was hoping the company would come to their senses.

Q. You were figuring you had a perfect legal right to call it?

A. When?

Q. January 15.

A. I bargained to a certain point and then I did a little checking myself. From my information, from my own layman's standpoint I felt we had given them notice, this "Mill B day".

Q. What is that?

A. It is the time before an automatic contract is renewed, in this case sixty days before January 15.

Q. Where did you get the "Mill B"?

A. The name indicates nothing unless you know how it is arrived at.

BY MR. MAUPIN:

Q. How many times did you go on the Tungsten property during the strike?

A. I don't know but I did drop down a day or two after the strike to find out what had been going on and told some of my staff men to check.

THE COURT: What did you find out when you got there and what did you do?

A. I got in there in the evening and met some of the

On page 203. Lines 1 through 25.

representatives and Mr. Holloman at the cafe at Henderson, North Carolina. Actually they were wanting us to try and resolve the problem for them. I repeated to them they would have to settle with the company. They told us they had met with the management on what I had told Mr. Wood to tell them to do. I asked them what they had struck for and possibly why they didn't go further with it.

Q. With what?

A. This grievance. Handling it in the manner we recommended. I was talking particular to Mr. Holloman. Whether Mr. Knight was there I am not sure. Mr. Holloman said they did go and talk to some officials or management. When I pressed further why they didn't talk to members of whatever group might be representing this other union they said they had tried to take up the discharge back in the month and they didn't do anything about it and they thought it useless to follow our recommendation and thought best to walk out. I repeated to them we couldn't do anything, that from the 15th on possibly if they wanted to ask the company to recognize us and that was done and try to iron their problems out we would be willing. The company had to add some words, telling the people exactly what occurred. I did assist Mr. Holloman in preparing what he wanted and the men wanted and I made it clear if they wanted us from the 15th on to help them we would be available and thought it was early and was certainly valid.

THE COURT: Did you take any part in it certainly up to the

On page 204. Lines 1 through 12.

15 of January?
A. No, sir.

Q. Are you familiar with Judge Williams' restraining order?

A. I had returned to Richmond and again received a call from Mr. Wood. He had apparently found out about the restraining order. I said, "Mr. Wood, you follow that order to the letter, any restraining order".

BY MR. MAUPIN:

Q. Did you at any time authorize any violence?

A. We certainly did not. Don't gain one iota by such foolishness as that.

Q. Did you condone any violence?

A. We certainly would not and did not.

* * *

On page 205. Lines 13 through 18.

* * *

Q. How many strikes have you been involved in in your regional area?

OBJECTION BY DEFENDANT OVERRUEED.

A. . . . I don't know if any but I say there have been very few in relation to the forty or fifty companies with which we have contracts. . . .

* * *

On page 206. Lines 1 through 10.

Q. How many of those strikes were attended by violence?

OBJECTION BY DEFENDANT OVERRULED.

A. I don't know of any that we have had any violence. If it means asking somebody not to come in, or as some workers think that it is Halloween.

Q. Don't you know what is meant by violence?

A. I don't know what you mean by it.

Q. Let's say physical violence.

A. Offhand I don't know of any in any of the strikes other than the one that is in issue which certainly we didn't cause.

* * *

On page 212. Lines 11 through 18 and lines 24 and 25.

* * *

A. I might add you said "established headquarters". I think you got to bear in mind before the 15th ever occurred, I believe on the night of the 14th a restraining order was made by the Judge which brought District 50 in and named us and Mr. Wood called me. It brought us in as a party in some manner and I thought until the thing could be settled to follow it to the letter and it was for that reason that this strike headquarters was established, to get them away from the picket line.

THE COURT:

* * *

A. . . . We didn't condone any violence of any sort and we repeated it so many times to the men it got

On page 213. Lines 1 through 25.

tiresome I guess. I didn't know the legal aspect of the situation where two men were fired. Didn't know deliberately. We told them not to strike. I know of incidents people outside influenced our own people to strike. I don't know whether somebody may have forced them to go on strike to bring us in.

THE COURT: I will assume all those matters in your favor. I think it a fair statement for you to make after the 15th your organization was participating in the strike.

A. We were participating from October. We didn't participate in calling that strike. I don't know how we could by our injecting ourselves continue it or not to continue it. It was caused from something we had nothing to do with.

Q. Were you encouraging it?

A. No.

Q. Were you doing anything to bring an end to it?

A. We would have liked to do it. When I went to Henderson Mr. Holloman told me they would not attempt to get those men back in early December and didn't follow our advice and go to the union knowing they wouldn't get representation they decided to walk out, and when I was in Henderson the men asked if we couldn't do something about it. I didn't know how we could administer a defunct union. I said the contract had to run until the 15th. I said "Possibly after the 15th you can bring us in to settle this problem. We will certainly feel it is proper for us after the 15th." . . . We gave sixty days notice, even sent copy to the Labor Board. We can't tell them what to do but if the company had wanted to do the right thing they didn't have to have another election to test their certification, but we still felt the 15th was the ethical and proper date.

On page 215. Lines 16 to 21 and 25.

* * *

Q. In your opinion it would have been ethical to do it?

On page 216. Lines 1 through 6.

A. It might have been but whether we would have called a strike. In my mind I feel it would have been ethical but I feel that before we would have taken action I would have done some checking. Would have done anything to try

to iron the thing out. I don't think we would have had the strike without first trying to do something.

* * *

On page 218. Lines 9 through 13, and line 25.

* * *

RE-DIRECT EXAMINATION OF MR. ROBT. R. FOHL:

Q. Mr. Fohl, state whether or not the first time the name District 50 was ever injected into this situation at Tungsten was when the order of the Superior Court named you as a respondent?

A. That's right.

* * *

Testimony of Lucian Lincoln Wood

On page 218. Line 25.

* * *

Q. During the occasion referred to in the complaint and in the

On page 219. Lines 1 through 25.

testimony of this case were you ever in Henderson or in and around the Tungsten Mining Corporation?

A. I was.

Q. When did you first go there and under what circumstances did you go?

A. I believe it was on October 16, 1952. I was called that morning or possibly the day before by Director Fohl. He asked me to meet him and Representative Walter Shuey in Henderson. I went to Henderson and met them and the three of us went to the home of Cordell Holloman who lived out in the rural area from Henderson. We talked with Mr. Holloman and he in turn while we were there gave us some additional membership and checkoff cards.

Q. What was the occasion of your visit to Mr. Holloman?

A. It was in connection with an organizing campaign that was being conducted or had been conducted at Tungsten Mining Corporation.

Q. Who called you to come down there?

A. On that particular occasion and that was the first occasion I came in contact with Tungsten Mining Corporation was Director Fohl, Regional Director.

Q. You occupy that position in Georgia now?

A. Yes, sir. I am Director of Region 26.

Q. Had the membership campaign proceeded when you arrived there?

A. It had. We had, so I was informed that morning, that we had a substantial majority of Tungsten employees signed up on our combination membership and checkoff cards.

On page 220. Lines 1 through 25.

Q. What employee of the mine had been getting those memberships?

A. Cordell Holloman.

Q. He was in charge of signing up the new men?

A. Yes, sir.

Q. Did you see the membership cards at that time?

A. I did.

Q. Did you count them?

A. I didn't at that time. We later counted the cards.

Q. From your computations were you able to determine whether you actually in fact had a majority as of the date of your first visit?

A. We had been advised there were approximately 400 employees at the mine and on that particular day, October 16, of course others signed up subsequent to that date, but we had well in excess of a majority.

Q. How many membership cards and checkoff authorizations did the union finally obtain?

A. If I am not mistaken I am sure it was 386.

Q. Did you later count them?

A. Yes. We counted them and a list made up of those people that had signed and the badge members, and so forth.

Q. These cards which were identified yesterday, the membership cards and checkoff authorizations, are those the cards which Mr. Holloman obtained?

A. Yes, they are.

On page 221. Lines 1 through 25.

Q. Did you run out of United Mine Workers of America Cards?

A. We ran out of District 50 cards but UCW and District 50 are the same. We represent UCW and District 50 and they are the same.

Q. You used some of those cards?

A. Yes, sir.

Q. Are these the cards?

A. These are the cards.

Q. At the same time or sometime thereafter were any cards obtained from employees of Tungsten to the effect that the signatory employee wished to resign from Stone Workers and no longer wanted Stone Workers to represent that employee as certified bargaining agent?

A. That is correct. There was a mimeographed sheet of paper.

Q. Are these the cards attached to that sheet?

A. Yes, these were on the bottom. There were made out one to the Stone Workers Union and the other to Tungsten Mining Corporation I believe.

Q. Were these slips obtained from employees of Tungsten Mining Corporation?

A. They were.

Q. And these are the ones identified yesterday as defendant's Exhibit 5?

A. Yes, sir.

Q. How many of these were there?

A. Two hundred and sixty something. I am not sure of the final figure.

On page 222. Lines 10 through 23.

* * *

Q. I believe you attended a conference with Mr. Fohl and Mr. Shuey in Mr. Sweet's office?

A. I did.

Q. And I believe the conference there was substantially as testified by Mr. Sweet and Mr. Fohl?

A. Yes, sir.

Q. And at that time did your union have a majority of the employees of Tungsten Mining Corporation as members?

A. We did.

Q. Do you know of any effort made by Tungsten Mining Corporation to determine which Union had a majority of the employees?

A. I know of no effort whatsoever that the company made to determine anything concerning the desires of the people so far as which union they preferred.

* * *

On page 223. Lines 17 through 25.

* * *

Q. State whether or not on any of those visits you ever authorized or suggested a strike?

A. No, sir.

Q. What were your instructions from your leadership to you?

A. We definitely as field representatives have no authority whatsoever.

Q. What do you mean?

A. I mean no field representative of District 50 of Mine Workers would have any authority to cause, or authorize, or sanction any

On page 224. Lines 1 through 25.

strike for any reason until we have contacted our superiors. In any organizing campaign the word strike may come up. There seems to be a lot of emphasis that the word strike has been used but as you lawyers do when trying to obtain money from a client's creditor you threaten to sue them, the word strike may come up in an organizing campaign as being the last resort but so far as our causing a strike we never did.

Q. Did you suggest a strike?

A. We never suggested a strike.

Q. When was the first you heard of a strike on January 9?

A. I was called some time in the afternoon, possibly after four o'clock. I was at the Sir Walter Chevrolet getting my car worked on when my wife called and said I had a telephone call from Mr. Holloman in Henderson. I finished up at the Chevrolet place and went back home and Mr. Holloman called me back and advised me that he and Jimmie Knight had been discharged by the company earlier in the day and that the men were threatening to strike. He asked me what to do about it. I told him under no circumstances should they strike but I would call Mr. Fohl and advise him of the situation and he could call me back later. I think he was at a pay telephone or something and was to call me. I talked with Mr. Fohl and he told me to ab-

solutely attempt to use the procedure set forth in their contract which would expire January 15, Stone Workers contract. When Mr. Holloman called me back later he said the men were out on strike.

On page 225. Lines 1 through 25.

Q. Approximately how many men were present at the various organizational meetings which you attended prior to January 9?

A. I would estimate two to three hundred people at each meeting.

Q. Where were those meetings held?

A. The majority were held at the ball park near Townsville.

Q. In the open?

A. Yes, sir.

Q. How far from Tungsten?

A. About five miles.

Q. Nothing secret?

A. No, sir. No guards. It was out in the open. Most of them at the grandstand and we used a loud speaker.

Q. On January 9 you testified Holloman called you and said in spite of what you had told them they were on strike?

A. Yes, sir. I had suggested before I talked to Mr. Fohl that he contact whoever he was supposed to contact, take up something about this discharge and when he called me back and said they were on strike he said he had gone to see some official of the company and asked him about going back to work and the man had told him, this is what Holloman told me in the telephone conversation, that the man told him so far as he was concerned he was still fired.

Q. Did you then go to Henderson?

A. He asked me to come up there.

Q. What did you find when you got there?

A. Group of men on strike or out milling around the mine.

On page 226. Lines 14 through 21.

* * *

BY MR. MAUPIN:

Q. You may proceed.

A. We told them we could do nothing whatsoever in the affair because of the contract that they had with Stone Workers and that we couldn't represent Holloman and Knight in going to the company to get any satisfaction on the discharge or take any part, sanction or authorize or direct anything in the strike. That they were on their own.

* * *

On page 227. Lines 13 through 16.

* * *

Q. Were you taking any active part in the strike?

A. No, we were a disinterested party. We were more or less curiosity seekers, as I imagine hundreds of people who went by there. It was on a public road.

* * *

On page 230. Lines 16 through 23.

* * *

Q. Mr. Williams said you referred to some part of the restraining order as "malarkey". Explain that.

A. I am a layman and the first part of the restraining order had to do with a lot of legal phraseology. I started on that and may have read one or two paragraphs and said "This is a bunch of legal malarkey. I will get down to things you ought to know". I made no statement that the restraining order was a lot of malarkey, but what I said was just a slang expression.

* * *

On page 231. Lines 9 through 18 and line 22.

* * * *

Q. State whether or not you ever saw an act of violence around that plant or anywhere in connection with this plant?

A. I definitely saw no violence. They never authorized any or encouraged any. In fact the meetings we held and contacts we held or had with the pickets after the 15th we asked them and told them definitely "You never gain anything through violence" and that they should refrain from it. Nobody wins strikes or labor disputes we feel with violence.

Q. Have you ever in your life authorized the use of violence in labor strikes?

* * *

A. I never have.

* * *

Testimony of Cordell Holloman

On page 240. Lines 11 through 25.

* * *

Q. When did you go to work for Tungsten?

A. I had been working approximately two years.

Q. In what capacity? What were your jobs?

A. I was working in the engineering office up until roughly two months before the strike. I mean four months.

Q. What were you doing in the engineering office?

A. I was more or less engineer's helper.

Q. Was that a supervisory job?

A. I was not in the bargaining union.

Q. You mean Stone Workers?

A. Yes, sir.

Q. Up until when did you work in the engineering office?

A. I started to working in the mine about four months before the strike occurred I would say.

Q. When you went to work in the mine did you then join the union?

On page 241. Lines 1 through 25.

A. No, sir.

Q. When did you join the union?
A. When I went to work in the mine underground.

Q. What union did you join?
A. United Stone and Allied Products Workers.

Q. Did you attend any meetings of the Stone Workers after you joined the union during the fall of 1952?
A. Yes, sir.

Q. Did you talk to the other employees who belonged to the union?
A. Yes, sir.

Q. Frequently?
A. Yes, sir.

Q. As a result of the talks and your attendance upon the meetings did you in the fall of 1952 take any steps to contact representatives of another union other than Stone Workers?

A. When I went to work in the mines talking to a lot of folks they were very disappointed with the union they had and after talking to quite a few of them I called my cousin, Frank Lumpkin—

Q. Where was Frank Lumpkin?
A. In Hopewell, Virginia.

Q. Know what he did up there?

A. I didn't know at the time. I knew he worked for Hercules Powder Company and they had a union.

Q. As a result of your call to your cousin Frank Lumpkin what happened?

On page 242. Lines 1 through 25.

A. The next day I think Walter Shuey came to my mother-in-law's home to talk to me.

Q. Did you tell him about the dissatisfaction of the workers?

A. Yes, sir.

Q. When was this?

A. I don't know the exact date but I say around the first of October.

Q. Did Mr. Shuey tell you what union he was representing?

A. Yes, sir.

Q. What union?

A. District 50 United Mine Workers.

Q. State what you did then.

A. Mr. Shuey told me if the people had a desire to change union he could give me some cards and I could have them signed and in return they would do what they could to be bargaining union for the people.

Q. After he gave you the cards, and when you say cards do you mean membership card in District 50?

A. Membership and checkoff card.

Q. Are these the cards he gave you?

A. Yes, sir.

Q. Did he give you any other papers?

A. This is all he gave me. He gave me constitution I believe.

Q. Then what did you do?

A. Took the cards and we had quite a few gatherings, meetings,

On page 243. Lines 1 through 25.

and I had well over two hundred sign in two or three days after that.

Q. Well over how many?

A. Two hundred.

Q. Who saw to the signing of these cards?

A. I had all the cards and handed them out and had them signed at meetings and gatherings.

Q. Were they all signed by employees of Tungsten at the time?

A. Yes, sir.

Q. Did you see them signed?

A. Yes, sir.

Q. Did you have them signed?

A. Yes, sir.

Q. On October 16, 1952 did you personally have signed more than a majority of the then employees of Tungsten Mining Corporation on those cards?

A. Yes, sir.

Defendant offers in evidence membership and check-off cards in District 50 and same are marked "D-4".

Q. You know how many cards you finally wound up with signed by employees of Tungsten Company.

A. Three hundred and sixty something.

THE COURT: 386 is the number.

Q. Mr. Holloman, did you get any other cards or mimeographed sheets signed by the employees?

A. Yes, sir. At a meeting we had at the ball park we got people

On page 244. Lines 1 through 25.

to sign cards to withdraw from the United Stone Workers Union.

Q. Is that the sheet of paper which I now hand you?

A. Yes, sir.

Q. Marked as defendant's Exhibit 5?

A. Yes, sir.

Q. You remember how many of those you got signed by employees?

A. I don't remember exactly. Two hundred and fifty or sixty.

Q. You got more than a majority of the employees?

A. Yes, sir.

Defendant introduces in evidence notice of severence of relations with Stone Workers, marked "D-5".

Q. Any other papers you got signed by the employees of Tungsten during the fall of 1952?

A. I am not sure but I think we had a sheet just with names on it.

Q. Did you ever have signed a sheet by employees asking for withdrawal of checkoff authorizations?

A. Ask that again.

Q. On a long sheet of paper you say was mimeographed that you had signed by employees, was there a section of that sheet of paper signed by the employees asking the company to withdraw their checkoffs?

A. Yes, sir.

Q. You know where they are?
A. No, sir.

Q. To whom did you turn over the membership cards in District 50 .

On page 245. Lines 1 through 25.

after you had them signed?
A. Turned the cards over to the representatives.

Q. Do you remember who?
A. The first we turned over to Mr. Fohl, Mr. Shuey and Wood and the others maybe to Mr. Fohl.

Q. Turned all these papers over to some representative of District 50?
A. Yes, sir.

Q. In October and November did you have further conferences with representatives of District 50 as you went about getting these papers and cards signed?
A. Yes, sir, they were present at some meetings.

Q. Did you continue to have meetings as you got the cards signed?
A. Yes, sir.

Q. Did you form a local of District 50 at Tungsten?
A. Yes, sir.

Q. How many employees attended these meetings from time to time?
A. Two to three hundred.

Q. Was the sentiment unanimous for District 50 at these meetings?

OBJECTION BY PLAINTIFF OVERRULED.

A. Yes, sir.

Q. Who were elected officers of the Local of District 50 during the fall of 1952?

A. I was elected president. George Patton vice president and Jimmie Knight was recording secretary I think. I just don't know

On page 246. Lines 1 through 25.

who the other officers were.

Q. Were they all employees of Tungsten?

A. Yes, sir.

Q. Had they all been members of Stone Workers?

A. Yes, sir.

Q. Now, Mr. Holloman, had there been any trouble about a strike among your new union local of which you were president up to January 9, 1953?

A. No, sir.

Q. Had there been any discussion of striking at any time?

A. No, sir.

Q. Did you have in the fall of 1952, or did you as president call a meeting of your union, Local of District 50, or Stone Workers either one?

A. What date was that?

Q. Any time in the fall.

A. I had several meetings.

Q. Did Mr. Sam Scott, who testified here the other day, and Mr. J. B. Foreman, whose name you have heard mentioned, attend that meeting?

A. They attended a meeting with the Stone Workers called at the regular union hall they had on mine property.

Q. How many employees were there at that Stone Workers meeting?

A. I would say there was a good two hundred and fifty or three hundred.

On page 247. Lines 1 through 25.

Q. Who presided over the meeting?

A. Didn't anybody much. Frank Swan, President of the local Stone Workers, started to talk, and Scott had a few words and didn't get very far and people started booing, telling him they didn't care for him or his union any more. Continued to boo any time any of the representatives tried to say anything and eventually they left.

Q. What did Mr. Scott and Mr. Foreman do then?

A. They left.

Q. Was any business conducted at that meeting after Mr. Scott and Mr. Foreman left?

A. It was either that meeting or the meeting before that that George Pendley was nominated and elected recording secretary to take the place of Carde who had been promoted to shaft foreman.

Q. He went to supervisory and therefore couldn't?

A. Yes, sir.

Q. Was a majority of employees present at that meeting?

A. Yes, sir.

Q. Did you authorize the duly elected recording secretary, George Pendley, to contact the company?

OBJECTION BY PLAINTIFF.

Q. Did you give George Pendley any instructions after you elected him recording secretary of Stone Workers?

A. Yes, we had George Pendley to send a letter to the company and to United Stone Workers.

On page 248. Lines 1 through 25.

Q. What did that letter say, if you know?

A. I don't know the exact words but I know the reason for the letter.

Q. I hand you what purports to be defendant's Exhibit 1, dated November 13, 1952, addressed to Tungsten Mining Corporation, indicating that a copy was sent to Stone Workers and the National Labor Relations Board. Is that the letter that George Pendley was instructed to write and did write?

A. That is the letter.

Q. And you witnessed it?

A. Yes, sir.

Q. Did Paul G. Gentry witness it?

A. Yes.

Q. Did R. M. Harris witness it?

A. Yes, sir.

Q. All were employees of Tungsten Mine?

A. Yes, sir.

Q. Did they attend the meeting at which that was authorized?

A. I suppose so.

Q. This letter of November 13 which George Pendley wrote to Stone Workers, did the workers at that meeting vote in favor of George Pendley, Secretary and Treasurer, writing the letter and mailing it?

A. Yes, sir.

Q. Did he mail it?

On page 249. Lines 1 through 25.

A. I suppose so.

Defendant introduces in evidence letter of November 13, 1952 to Tungsten Mining Corporation from George Pendley, marked "D-1".

Q. You stated there was a long mimeographed sheet of paper containing places for signatures of employees of

Tungsten of which you got more than a majority. Is this what you are talking about?

A. Yes, sir.

Q. And did you personally get more than a majority of signatures of the employees to this paper?

A. Yes, sir.

Defendant introduces in evidence mimeographed sheet containing three sections, one addressed to Tungsten Mining Corporation asking for withdrawal of checkoff authorizations; one addressed to Stone Workers; and

3. (A) To whom it may concern:- I hereby wish to sever all relations with the United Stone and Allied Products Workers of America and request that it no longer be the certified bargaining agent at Tungsten Mining Corporation, Tungsten, North Carolina". A blank for signature, a blank for page number, a blank for witness and a blank for date.

said mimeographed sheet being marked "D-7".

THE COURT: What did you do with it?

A. I think the whole thing was turned over to Mr. Fohl.

Q. In the fall?

A. Yes, sir.

On page 250. Lines 8 through 15 and lines 22 through 25.

* * *

Q. Did any representatives of District 50 ever suggest that you strike, authorize you to strike, or encourage you to strike?

A. No, sir.

Q. Were you present at the meeting on October 16, 1952?

A. I don't remember.

Q. The day it was testified yesterday that Messrs. Fohl, Shuey, and Wood went to see General Manager Sweet?

A. No, sir. I was at my home.

* * *

Q. Did you know they were going to see Mr. Sweet?

A. Yes, sir.

Q. Did they at that time have these cards and mimeographed paper?

A. They had the cards.

On page 251. Lines 1 through 3.

Q. Did you have more than a majority of the cards representing more than a majority of the employees?

A. Yes, sir.

* * *

On page 252. Lines 9 through 25.

* * *

Q. Where were you about eleven-thirty A.M. on January 9, 1953?

A. Working on the 500 level up in the stope about 60 feet from the track. Jimmie Knight and I were working together. This particular stope was a small one and very hard to get through. Had to climb the ladder from the bottom to the top. I would say around eleven-thirty we came down to get a short piece of 2 by 4 about two feet long. Had to saw it a particular angle to make it fit. We did that and shortly after we had finished we started to eating lunch because by the time we would have gone up in the stope it would have been lunch time anyway before we got up to where we were working. So we started eating lunch.

Q. What time?

A. I don't recall exactly but around a quarter or ten minutes to twelve. Jeter Murdock and Townsend came by where we were eating.

Q. Who are they?

A. Townsend was shaft boss. Jeter Murdock was assistant mine foreman.

On page 253. Lines 1 through 25.

Q. Were they your superiors?

A. Yes, sir. They went up in the stope I would say ten or fifteen feet of the track, stayed about five minutes and came back down. Murdock went back to the shaft and Townsend came to where we were eating lunch and said, "You fellows realize you are eating lunch a little early." I don't know the remarks we made but he said, "In other words you are fired", and so we didn't argue about it or anything.

Q. Did he say anything else?

A. Yes, he said, "Go up and get your time", and so we went out with him to the shaft and went up and changed clothes. At that time I guess it was close to one o'clock or maybe one-thirty.

Q. Did you get your check?

A. No, sir.

Q. Did Jimmie Knight get his?

A. I don't believe so.

Q. Had Murdock or Townsend ever warned you about eating lunch before twelve o'clock?

A. They had not. In fact I had eaten lunch with both of them before twelve occasionally.

Q. And they had never ordered you not to eat lunch before twelve or warned you?

A. No, sir.

Q. How long had you and Jimmie Knight been working together?

A. We either started that day or the day before.

* * *

On page 255. Lines 9 through 25.

* * *

Q. Now, Mr. Holloman, I want you to go into detail about something you said. You said you and Jimmie Knight had come down to the tracks from up in the stope about sixty feet to get a 2 by 4.

A. Yes, sir. This particular stope was at the top about two or three feet wide and had to cut the 2 by 4 at an angle which would require measurements and angle cutting. We got the 2 by 4 and sat down to eat lunch.

Q. What time was that?

A. Roughly fifteen minutes to twelve.

Q. Were you going to take the cut 2 by 4 back up in the stope?

A. Yes, sir.

Q. How did you have to go up in the stope?

A. It was very narrow. Go up a few feet in a small section of the stope then go up in another section. Very difficult to get through and it would require quite a bit of time.

Q. How long would it have taken you to get back up in the stope after you got the 2 by 4?

On page 256. Lines 1 through 25.

A. Carrying the 2 by 4, we were working fifty or sixty feet from the track, it would take fifteen or twenty minutes to get back up there.

Q. Then where would you have to go to eat lunch?

A. Would have to go back to the track.

Q. Was it your intention to take more than thirty minutes?

A. No, sir, we had often ate lunch earlier but didn't take more than thirty minutes. If we had ate at quarter to twelve we would get back at quarter after twelve.

Q. Would you at this particular time?
A. I would have been more careful.

Q. Why?
A. Because I knew the company knew I was more or less organizing a different local union than they had and was afraid they would fire me and I did my work better during that period and was extremely cautious not to do anything wrong to be fired.

Q. Mr. Townsend said, "You are fired"?
A. Yes, sir. Townsend and Jimmie Knight and I went back to the shaft together. Going up on the cage Townsend said, "I hope you fellows realize it was not my idea for firing you".

Q. You say you had eaten lunch with Townsend before before twelve o'clock?
A. Yes, sir.

Q. When you got to the surface what did you do?
A. We went over to the change shaft and changed clothes and went

On page 257. Line 1 and lines 9 through 25.

to Henderson.

* * *

BY MR. ARENDELL:

Q. Went into Henderson and then what did you do?
A. Went into Henderson and saw a lot of fellows going to work at six o'clock and told them what had happened and then in turn they saw a lot of fellows I suppose and told them what had happened. I guess this was around two or three o'clock. I called Wood in Raleigh, and Wood said that he would call Fohl, that they couldn't do anything for us he was sure, that the thing for me to do was go through the grievance procedure with Stone Workers and I suppose I hung up at that time. We talked to a lot of fellows after

that and they decided, or we decided rather, it wouldn't be any use to take up the grievance with the Stone Workers Local from other things that had happened. Then Jimmie Knight and I went to see I think Roberson.

Q. Who was he?
A. Assistant to Buck O'Donnell.

Q. Who was Buck O'Donnell?
A. Mine superintendent.

On page 258. Lines 1 through 25.

Q. Go back to Tungsten to see them?
A. Yes, sir. They lived in the same row of houses or right next door to each other. O'Donnell won't at home and we saw his assistant and Roberson said so far as he was concerned we were fired.

Q. Did he suggest anything?
A. He suggested nothing. We told the fellows, a lot of them standing there, and they told everybody coming off the shift which I think was four o'clock. Ninety-five percent of them stayed there. This was when we were coming from Henderson. Everybody we met on the road turned around and went back to the mine. Didn't nobody go to work at six o'clock. Maybe one or two scattered.

Q. Did Wood or Fohl, or anybody representing District 50 suggest you go on strike?
A. No, sir. They suggested that I take it up through grievance with Stone Workers. We decided it wouldn't be no use.

Q. Was Mr. Foreman around that day?
A. I didn't see Mr. Foreman on that day.

Q. State what happened then.
A. Well, I don't know exactly what happened right at that time.

THE COURT: Did you have any formal meeting in which you adopted a resolution or was it just from one to the other?

A. It was just from one to the other.

Q. How many of them stayed out at six o'clock?

A. I would say about 150 would have gone to work at six

On page 259. Lines 1 through 6 and lines 21 through 25.

o'clock and roughly 150 or 200 coming off at four o'clock and everybody was there I would say at six o'clock.

Q. How many?

A. 300 or 350.

Q. You mean 350 that struck and didn't go to work?

A. Yes, sir.

* * *

Q. Did you ever take part in any violence?

A. No, sir.

Q. Did you ever advise or encourage any violence?

A. No, sir.

Q. Were you around the gates for several days?

On page 260. Lines 1 through 6.

A. I was there practically twenty-four hours a day.

Q. Did any representative of District 50 ever advise or encourage the continuance of any strike or any violence?

A. Not in my presence.

Q. Did you see any violence ever during the strike?

A. No, sir.

* * *

On page 261. Lines 3 through 7 and lines 17 through 19.

* * *

Q. Were you there when the District Court restraining order came down on February 3?

A. Yes, sir.

Q. Did the strike immediately end?

A. Yes, sir.

* * *

THE COURT: Where are you working now?

A. National Analine Division Allied Chemical and Dye, Hopewell, Virginia.

On page 262. Lines 1 through 4.

THE COURT: Are you in a supervisory job?

A. Yes, sir.

Q. Are you a member of any union now?

A. No, sir.

Testimony of J. B. Foreman

On page 271. Lines 4 through 25.

* * *

Q. Did you have occasion to come down to Henderson or Tungsten, North Carolina the fall of 1952?

A. Yes, I did.

Q. Who were you employed by at that time?

A. United Stone and Allied Products Workers of America.

Q. For what purpose did you go to Henderson?

A. There was some trouble with the local union.

Q. What was your position with the United Stone and Allied Products Workers?

A. National representative.

Q. Who directed you to go to Henderson or Tungsten?

A. Mr. Sam A. Scott.

Q. When did you go?

A. Around October 18.

Q. What was Mr. Sam Scott's position?
A. President of International Union.

Q. Where does he reside?
A. Winston-Salem, North Carolina.

Q. When you got down to Henderson what did you find?
A. I found that the local union here was being raided by District 50.

Q. What do you mean by that?

On page 272. Lines 1 through 25.

A. We use the word "raiding" when members of our union sign up in another union.

Q. How did you find that out when you got down here?
A. I found that out by contacting the workers.

Q. How many did you contact?
A. That would be hard to say. I contacted many of them at Henderson on the streets, or at least they contacted me, as well as quite a number came to the hotel and I contacted a number of them around Tungsten.

Q. In respect to whether or not you contacted a majority what would you say?
A. I would say I talked to a majority.

Q. What did you find from your conversations with these employees?
A. I found a very bad situation.

Q. What do you mean by a bad situation?
A. It appeared that a majority of them had signed into another union.

Q. What union was that?
A. District 50.

Q. What percent do you know or have an opinion had signed with District 50 of the employees of this plant?
A. I felt that practically all of them had.

Q. Did you report then to Mr. Sam Scott?
A. Yes, I did.

Q. What did you tell him?

On page 273. Lines 1 through 7 and lines 21 through 25.

A. Told him it looked like he had a bad situation here.

Q. Tell him about what majority had been signed up with District 50?
A. Yes, sir. Told him it looked like most of them had signed up with District 50.

Q. What did he say and do?
A. Said it was my job to rebuild the organization.

* * *

Q. At any time from the time you got there until the 9 of January you know whether or not a majority of employees of Tungsten were signed up with United Mine Workers, District 50?
A. No question in my mind.

Q. Ever talk with Mr. Sweet and Mr. Long about that?

On page 274. Lines 1 through 25.

A. I talked to Mr. Sweet and talked to Mr. Long.

Q. Was that during the fall of the year or when?
A. It was during this period. I don't know the exact date.

Q. Where were you when you talked to them about the membership of the employees?
A. I believe I talked to them several times.

Q. Were they informed that the situation was relative to membership in District 50 United Mine Workers?
A. Yes, sir. I don't think any question in anybody's mind regarding the membership that had signed with District 50.

Q. When you found out what the situation was what action was taken by your executive board?

A. When we found we had a few members and practically no officers I was appointed administrator by the International Union.

Q. I hand you a document and ask you to please examine that.

Defendant offers in evidence notice to all members of Local 98 Stone Workers, dated November 18, 1952 and same is marked "D-3".

Q. Were any slips presented to you signed by workers of Tungsten Mine withdrawing from Stone Workers?

A. Yes, sir.

Q. Do you have such slips?

A. Yes, I do.

Q. Who delivered these to you?

A. These were mailed to me by Mr. Holloman.

On page 275. Lines 18 through 25.

* * *

BY MR. GREEN:

Q. Did you have a conference from time to time with Mr. Sweet, Mr. Long and Mr. Scott?

A. Yes, I believe we met.

Q. Where did you meet Mr. Sweet?

A. I believe at his office several times.

Q. Ever meet him at his home?

A. Yes, I believe I met him at his home.

On page 276. Lines 1 through 25.

Q. How many times?

A. Once, maybe twice.

Q. Was that during the night?

A. I would say it was in the evening.

Q. Who was with you?
A. Mr. Scott.

Q. Ever have a meeting with Mr. Long?
A. I believe we met Mr. Long at the office.

Q. Meet him in the hotel at Henderson?
A. Mr. Long may have come by and stopped to chat a little once or so.

Q. I hand you a document and ask you to look at it. Did you write the original of that and sign it and send it to Tungsten Mining Corporation?
A. I did.

Defendant introduces in evidence letter dated November 14, 1952 from J. B. Foreman, International Representative, to Tungsten Mining Corporation, marked "D-2".

Q. In that letter you referred to negotiating for a new contract.
A. That's right.

Q. At that time did you know what percentage, or approximately what percentage that desired District 50 bargain for them?
A. We had very few members.

Q. How many would you say you had?
A. I wouldn't like to say. Maybe five percent.

On page 277, Lines 1 through 25.

Q. Now, Mr. Foreman, you had been appointed administrator?
A. Yes, sir.

Q. And you had served such notice on the company and on the employees hadn't you?
A. Yes, sir.

Q. What was your authority as an administrator?
A. As administrator I was the whole union.

Q. When do you in your organization appoint an administrator?
A. Usually when they lose membership and officers.

Q. And for what purpose is the administrator appointed?
A. Appointed to protect international union and funds of local union.

Q. Isn't he appointed for the purpose of retaining control after the members have withdrawn?
A. Yes, and to protect the certification of the union.

Q. What was the attitude and action by Mr. Sweet and Mr. Long towards the union or organization which you represented as administrator?
A. Personally I always got along fine with Mr. Sweet and Mr. Long. Think a lot of them.

Q. Do you know whether it was their desire to maintain Stone Workers or comply with the wishes of a majority of the employees?

OBJECTION BY PLAINTIFF SUSTAINED.

Q. You know which organization they wanted to retain as their bargaining agent for their mill?

OBJECTION BY PLAINTIFF SUSTAINED.

On page 278. Lines 1 through 25.

Q. Did they ever tell you which organization they wanted to retain?
A. No, I don't believe they did.

Q. Did you enter into any negotiations or talk about a new contract or a wage scale?
A. We entered into negotiations.

Q. Was there any statement made by Mr. Long or Mr. Sweet or either one about recognizing District 50, United Mine Workers?

A. I don't think any question. I believe it was in the paper that the company didn't want to recognize District 50 because they were not using National Labor Relations Board.

Q. Tell about your negotiations in respect to a contract, where it was made, what was entered into and the whole facts so far as same related to the new contract in the wage scale.

A. Mr. Scott, who was my superior officer, told me one day I would have to leave the next day for New York to negotiate the contract and I did leave. I went to Martinsburg that same day and the next day met Mr. Scott in Washington or Wilmington, Delaware and went with him to New York. The following day we met and negotiated the contract.

Q. Where did you stay in New York.

A. I believe the Picadilly Hotel.

Q. With whom did you meet?

A. Mr. Long and Mr. Sweet.

Q. Who else was in the conference?

On page 279. Lines 1 through 25.

A. Mr. Scott was there and Mr. Angoff.

Q. Where did you meet?

A. In a hotel across the street from where we were staying.

Q. Do you recall whether it was the Astor?

A. The record will show that.

Q. What was said and done at that meeting?

A. To enter into negotiations, which we did, and the result we entered into contract.

Q. Tell what was said by you and Mr. Long and Mr. Sweet and Mr. Sam Scott?

A. The company had some very good suggestions, which we agreed to, I believe regarding adjustment of a couple of wage rates for some of the departments. Main thing I was interested in was the money because as administrator I thought the more I could get the men take home pay the more chance I would have in rebuilding the union. We agreed to 10c on the hour and I stated if they could see their way for 2½c more they could write the contract.

Q. Where was that?

A. In the hotel.

Q. What city?

A. New York.

Q. What date was that?

A. I believe December, 17.

Q. Did they then make any further agreement or come to your demand for 12½c per hour increase?

On page 280. Lines 1 through 25.

A. I believe we had a meeting at the mine office around the 17th.

Q. Let's finish up the New York Meeting. What was agreed to in New York?

A. The complete agreement.

Q. What was that increase?

A. I took it as 12½c.

Q. You had full authority to act for the union?

A. Yes, sir.

Q. Did you have to have a committee to serve with you?

A. No.

Q. Did you sign the contract that day?

A. No.

Q. Why didn't you sign it?

A. Of course it has to be written up before it is signed.

Q. Is that the only reason?

A. I believe Mr. Scott suggested we meet at Tungsten with the managing committee and go over it.

Q. What did Mr. Sweet say about that?

A. He objected to that same as I did because we thought it useless to do that.

Q. What kind of meeting were you going to have with the committee?

A. Actually the same as we had in New York to negotiate the contract.

Q. State whether you prepared the contract and submitted it to

On page 281. Lines 1 and 2 and lines 17 through 25.

the committee before the meeting down at Tungsten mine?

A. No. . . .

* * *

OBJECTION BY PLAINTIFF

Q. I ask you isn't it a fact that when you came back you went into this meeting as if no agreement had ever been entered into in New York and you didn't let the people know about it and argued back and forth?

OBJECTION BY PLAINTIFF OVERRULED.

A. Yes, sir.

Q. How long did you stay around Tungsten Mine or around Henderson?

A. I think I left in March.

On page 291. Lines 16 through 22.

* * *

Defendant introduces in evidence Article 9 of the constitution of District 50 entitled "Strike policy, sec-

tion 1". "No strike action shall be taken which does not comply with existing laws and before it has been approved by a majority of the workers involved and no strike shall take place without first obtaining approval therefor from the administrative officer of District 50".

Testimony of Jeter Murdock

On page 296. Lines 12 through 25.

* * *

Q. You don't ever recollect firing anybody before that for eating lunch half an hours before twelve?

A. No, sir.

Q. Have you fired any since?

A. I don't think so.

Q. Why did you fire these particular two.

A. That was Mr. Townsend. I walked out and he went and talked to these boys.

Q. You could have told him not to fire them?

A. Yes, sir.

Q. You could have rescinded it?

A. Yes.

Q. You thought it was the right thing to do?

A. Yes.

* * *

FILED
JUN 18 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. ~~1100~~ 202

DISTRICT 50, UNITED MINE WORKERS OF AMERICA,
Petitioner,

v.

TUNGSTEN MINING CORPORATION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

CRAMPTON HARRIS
1018-19 First National
Building
Birmingham 3, Alabama

CHARLES P. GREEN
Louisburg, North Carolina

VELAZETON COWHERD
900-15th Street, N. W.
Washington 5, D. C.

ARLED D. TREHERNE
900-15th Street, N. W.
Washington 5, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Prayer	1
Opinions Below	2
Jurisdiction	2
Questions Presented	2-3
Constitutional and Statutory Provision Involved	3
Statement of the Case	3-7
Reasons for Granting the Writ	7-15
1. Opinion adds duty to the Act	7-8
2. Opinion adds penalty to the Act	8
3. Opinion denies petitioner due process guaranteed by Fifth Amendment	8
4. Opinion violates principles of res judicata and intertwines sections of the Act kept separate	8-10
5. Opinion violates Rule 52 (a) F.R.C.P.	10-12
6. Certification becomes ineffective when union becomes defunct	12-15
Conclusion	15
Appendix	1a

CITATIONS

Cases:

Amalgamated Utility Workers v. Consolidated Edison Co., 309 US 261 at 265	9
Boeing Airplane Co. v. Aeronautical Industrial District, 91 F. Supp. 596, affirmed 188 F. 2d 356, certiorari denied 342 US 821	10
Brooks v. N.L.R.B., 348 US 96	13
Celanese Corporation of America, 95 NLRB 664 at 672 and 673	13

Page

Cox v. Roth, 348 US 207 at 209 13

District 50, United Mine Workers of America, 106 NLRB 903 ..... 4, 13, 60a-73a

Hardison v. Everett, 192 N.C. 371, 135 S.E. 288 9

Holy Trinity Church v. U.S., 143 US 457 14

Longshoremen v. Juneau Spruce Corp., 342 US 237 at 243 8

McInturff v. Gahagan, 193 N.C. 147, 56 C.J.S., p. 18 9

Nashville Bridge Co., 49 NLRB 629 12

N.L.R.B. v. Proof Co., 242 F. (2d) 560 13

John L. Parks v. Atlanta Printing Pressmen, 243 F. (2d) 284 14

Public Service Electric & Gas Co., 59 NLRB 325 13

Tungsten Mining Corp. v. District 50, U.M.W.A., 142 F. Supp. 800 ..... 2, 47a-57a

Tungsten Mining Corp. Appellant v. District 50, U.M.W.A., Appellee, 242 F. (2d) 84 ..... 2, 1a-27a

United Mine Workers of America v. Arkansas Oak Flooring Co., 351 US 62 at 69 ..... 11, 12

U.S. v. C.I.O., 335 US 106 14

United States v. National Ass'n of Real Estate Bds., 339 US 485 at 495-496 11

United States v. Yellow Cab Co., 338 US 338 at 341-42 11

Vermilya-Brown v. Connell, 335 US 377 at 390 14

WTOP, Inc., 114 NLRB 194 13

Constitutional Provisions:

United States Constitution, Fifth Amendment 3, 8, 73a

Page

STATUTES:

Labor Management Relations Act of 1947, as amended:

Section 1 ..... 3, 14, 73a-74a
Section 2 (1) 3, 74a
Section 7 ..... 3, 14, 74a
Section 8 (a) (5) 3, 12, 74a
Section 8 (b) (4) (C) 2, 3, 4, 8, 9, 75a
Section 8 (b) (4) (D) 8
Section 9 (a) 3, 75a
Section 9 (B) (3) 3, 76a
Section 13 ..... 3, 14, 76a
Section 303 (a) (3) 2, 3, 4, 7, 8, 9, 12, 14, 76a-77a
Section 303 (a) (4) 9
Section 303 (b) 2, 3, 4, 8, 9, 76a-77a
28 United States Code, Section 1254 2
Federal Rules of Civil Procedure, Rule 52(a) 3, 10, 11, 77a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA,
Petitioner,

v.

TUNGSTEN MINING CORPORATION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:

District 50, United Mine Workers of America, the petitioner herein, prays that a writ of certiorari be issued to review the final judgment and decree of the United States Court of Appeals for the Fourth Circuit entered in Case No. 7293 in that court, entitled Tungsten Mining Corporation, Plaintiff-Appellant, versus District 50, United Mine Workers of America, Defendant-Appellee, reversing the judgment and decree of the United States District Court for the Eastern District of North Carolina at Raleigh which adjudged that Tungsten Mining Corporation recover

nothing in its suit for damages against District 50, United Mine Workers of America, under Section 303 (a) (3) and (b) of the National Labor Relations Act, as amended.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit has been published in 242 F (2d) p. 84, and appears in the Appendix hereto, pp. 1a to 27a. The opinion of the District Court is reported in 142 F. Supp. p. 800, Appendix pp. 47a to 57a.

JURISDICTION

The opinion, judgment and decree of the United States Court of Appeals for the Fourth Circuit was rendered and entered on February 12, 1957. Appendix p. 1a.

Timely application for rehearing was denied on March 26, 1957. Appendix p. 46a.

The jurisdiction of this court is invoked under Title 28, U. S. Code, sec. 1254, which provides in part:

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

"(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

QUESTIONS PRESENTED

1. Is a labor union under such a duty to put on evidence before the National Labor Relations Board in defense of a charge of striking in violation of Sec. 8 (b) (4) (C) of the National Labor Relations Act, as

amended, that the failure to put its evidence before the Board prevents the union from successfully using the evidence as a defense when sued for damages by the employer under Section 303 (a) (3) and (b) in a United States District Court?

2. Is formal decertification by the National Labor Relations Board the only manner in which a certification can cease to be effective?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fifth Amendment to the United States Constitution and Sections 1, 2 (1), 7, 8 (a) (5), 8 (b) (4) (C), 9 (a), 9 (B) (3), 13, 303 (a) (3) and 303 (b) of the National Labor Relations Act, as amended, Rule 52 (a) of the Federal Rules of Civil Procedure, all of which appear in the Appendix pp. 73a to 77a.

STATEMENT OF THE CASE

About April 3, 1946, the National Labor Relations Board certified United Stone and Allied Products Workers of America, C.I.O. (hereinafter called Stone Workers) as the collective bargaining representative of the employees of Tungsten Mining Corporation's operation near Henderson, North Carolina. On February 3, 1953, on petition of the National Labor Relations Board, Judge Gilliam of the United States District Court for the Eastern District of North Carolina, enjoined District 50, United Mine Workers of America, from striking Tungsten Mining Corporation in violation of Sec. 8 (b) (4) (C) of the National Labor Relations Act, as amended. District 50 immediately obeyed the injunction and the strike ended that day.

Notwithstanding the end of the strike, the Board, on March 3, 1953, began a hearing of an unfair labor charge under Sec. 8 (b) (4) (C) against District 50. District 50 put on no evidence in defense of the charge. The Board found District 50 guilty as charged and entered an order (106 NLRB p. 909), set out in the Appendix hereto, pp. 71a-73a, which had already been fully covered by the February 3rd injunction which appears in the Appendix hereto, pp. 58a-59a.

The Board, despite the end of the strike, applied to the United States Court of Appeals for the Fourth Circuit for enforcement of its order. District 50 argued to the court that the question was moot and that there had already been substantial compliance by District 50 with the Board's order. Appendix, pp. 77a-78a. Without opinion, on March 19, 1954, the court entered a decree enforcing the order.

On December 3, 1953, Tungsten sued District 50 for damages under Sec. 303 (a) (3) and (b) of the Act. The case was tried in the United States District Court without a jury. The court found and wrote:

> "I am adjudging that District 50 is not liable to Tungsten because Stone Workers, despite its certification, was no longer a going concern, nor did it represent the overwhelming majority of Tungsten's employees—a situation of which Tungsten had every reason to be well aware." Appendix p. 56a

We summarize the facts found by the trial court and, in part, quote the exact language of the court: Representatives of District 50, at the instance of William Holleman and other employees of Tungsten dissatisfied with Stone Workers representation, visited Tung-

sten and supplied Holleman with application cards for membership in District 50. "In short order, 386 of Tungsten's approximately 400 employees signed up with District 50. Of these 386, 269 who had been members of Stone Workers also signed forms to sever relations with that union and cancel their dues check-off authorizations held by the Company." Appendix p. 48a.

About the middle of October, 1952, District 50 representatives conferred with James R. Sweet, Vice-President and General Manager of Tungsten, informed him of their union's majority status at Tungsten, explained their union's avoidance of National Labor Relations Board facilities and offered to have District 50's status verified through the medium of some other disinterested party, such as local ministers and the North Carolina Department of Labor. "There was, of course, no offer or request for the membership lists to be handed over directly to Tungsten." Appendix p. 48a.

E. B. Foreman, appointed administrator of the Tungsten Local by the President of the Stone Workers International Union, came to Tungsten shortly thereafter and, "Inquiry among the workers convinced him that virtually all had joined District 50, and he so informed the company." Appendix 48a.

> "* * * Tungsten made no effort whatsoever to accurately evaluate the obvious situation of which it had full and ample notice. Before and during the strike Tungsten steadfastly refused to even consider that the Stone Workers Local was a defunct organization." Appendix p. 49a.

The strike began January 9, 1953, when Holleman, then President of the new District 50 Local, and James

Knight, its Secretary, were fired because they ate their lunch before the regulation noon hour.

> "On January 15, 1953, Tungsten's old contract with Stone Workers expired and District 50 formally adopted the six day old strike for the purpose of getting recognition." Appendix p. 51a.

The trial court found that a majority of Tungsten's employees was, in January, 1953, committed to District 50 and had repudiated Stone Workers. He wrote: "This unquestionably was the situation and Tungsten was on notice." Appendix, p. 55a.

The trial court further found: "Tungsten really makes no attack on the large 'sign up' which had been obtained by District 50 and there is no vestige of proof or even a suggestion that the signatures on the cards were not authentic. * * * So that, it is my view that Tungsten was free to recognize District 50 in spite of the Board's certification of Stone Workers, but Tungsten preferred a contrary course, taking the position that it would recognize only a union certified by the N.L.R.B. Such position was without justification in law, as above pointed out." Appendix p. 55a.

On appeal the United States Court of Appeals reversed the trial court basing the reversal in part on facts not found by the trial court and which are not supported by any evidence in the record. The language is:

> " * * * Add to this the fact that the authorizations relied upon by District 50 had been obtained in association with threats of strike and violence (which materialized), and it cannot be said that Tungsten acted improperly or unlawfully in insisting upon a properly supervised secret ballot to determine the real, uncoerced wishes of its employees.

"We hold that under these circumstances Tungsten was not legally obligated to recognize District 50 as the bargaining agent of its employees, in view of the outstanding certification of Stone Workers." Appendix p. 18a.

There is not a word of testimony in the record to show that any one of the majority authorizations in the hands of District 50 on the first conference with the Vice-President of Tungsten on October 16, 1952 had been obtained in association with threats of strike and violence.

The Court of Appeals further decided: "We hold that under the facts of this particular case the deliberate withholding from the Board, * * * of these 'facts' relied upon as a defense below, binds District 50, and prevents it from successfully defending this suit on the ground that at the times in question Stone Workers was not the certified bargaining agent of Tungsten's employees within the meaning of Section 303 (a) (3). As a consequence, the strike, and District 50's participation therein, were unlawful". Appendix p. 26a.

In the appendix to its petition for rehearing, District 50 gave its justification for not putting on evidence at the hearing before the Board. Appendix, pp. 38a-40a.

REASONS FOR GRANTING THE WRIT

1. The United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this court and has so far departed from the accepted and usual course of judicial procedure as to call for an exercise of this court's power of supervision. The departure is twofold: The Court of Appeals has imposed upon a labor

union charged before the Board with an unfair labor practice in violation of Sec. 8 (b) (4) (C) of the Act the duty putting on evidence in defense of the charge. There is not a word in the National Labor Relations Act, as amended, imposing such a duty. We have not been able to find a decision of any other court in America which imposes or requires such a duty.

2. In the second place, the Court of Appeals has amended the Act of Congress by adding a penalty to the Act which is nowhere to be found in any provision of the Act. The added penalty is the forfeiture by the union of its defense to a damage suit brought under Sec. 303 (a) (3) and (b) by failure to introduce evidence of that defense in the unfair labor practice proceeding before the Board. We have not been able to find another case in America which inflicted this penalty, nor did the Court of Appeals cite any case or law in justification of this penalty.

3. The opinion of the Court of Appeals deprives this petitioner of due process of law guaranteed it by the Fifth Amendment to the Constitution of the United States. The Court has placed upon this petitioner a duty not required by law and denied it a defense because it did not perform that non-legal duty and has deprived it of a trial according to accepted principles of res judicata.

4. The decision of the Court of Appeals interweaves and intertwines two provisions of the Act which Congress deliberately kept separate. Sections 8 (b) (4) (C) and 303 (a) (3) and (b) are not reciprocally dependent. The language of Mr. Justice Douglas, writing for this court, in *Longshoremen* v. *Juneau Spruce Corp.*, 342 U. S. 237 beginning at p. 243, makes clear the difference between Sections 8 (b) (4) (D), which gives rise to an

administrative finding, and 303 (a)(4) which gives rise to a suit for damages, applies with equal force to Sections 8 (b)(4)(C) and 303 (a)(3) and (b).

The Court of Appeals states, "It may be granted that there was no estoppel, as that term is technically defined, in the decision of the Board." Appendix, p. 24a. Then the court in effect holds that there was an estoppel by the deliberate withholding from the Board of the facts relied upon as a defense to the damage suit. Appendix, p. 26a. The opinion is either based on estoppel or the principles of res judicata, or both. There is no estoppel because there is no representation by this petitioner which Tungsten acted upon or relied upon to its detriment.

The doctrine of res judicata arises from the combination of three elements; namely: (1) the parties must be the same; (2) the subject-matter must be the same; (3) the issues must be the same. See *Hardison* v. *Everett*, 192 N.C. 371, 135 S.E. 288, and *McInturff* v. *Gahagan*, 193 N.C. 147, 50 C.J.S., p. 18. The Labor Board proceeding was under the control of the General Counsel of the Board who, in the theory of the law, was acting in the public interest and not in behalf of Tungsten Mining Corporation. The party plaintiff before the Board was the General Counsel on behalf of the Board. The party plaintiff in the damage suit was simply Tungsten Mining Corporation.

The analysis of a Board proceeding by Mr. Chief Justice Hughes in *Amalgamated Utility Workers* v. *Consolidated Edison Company*, 309 U.S. 261 at 265 demonstrates this essential difference in parties.

Clearly the two actions did not seek the same relief. One sought to stop an unfair labor practice; the other

sought a money judgment for the corporate plaintiff. See *Boeing Airplane Co.* v. *Aeronautical Industrial District*, 91 F. Supp. 596, affirmed 188 F. 2d 356, certiorari denied 342 U.S. 821.

In innumerable cases trial judges have refused to let plaintiffs in a tort action show the conviction of the defendant in a recorder's court for reckless driving, or in a criminal court for assault and battery.

The paragraph of the opinion dealing with "deliberate withholding from the Board" concludes with the sentence, "As a consequence, the strike, and District 50's participation therein, were unlawful". Appendix p. 27a. What strange reasoning! The present does not influence the past. The failure to put on evidence on March 3rd does not determine the quality of the actions completed on February 3rd preceding.

On the trial of the damage suit, the trial court had the task of determining the true state of things from January 9 to February 3, 1953. One problem was to determine the force and effect of subsequent events upon a certification six (6) years old and not to determine what the Board later thought was the effect of those subsequent events and changes. The Act does not make the District Court a mere accountant to compute damages. Hence the averments of paragraph 10 of the Complaint (Plaintiff's Appendix, p. 4) were stricken by the trial court (Defendant's Appendix, p. 28).

5. The fourth reason for granting the writ is the failure of the Court of Appeals to follow Rule 52 (a) of the Federal Rules of Civil Procedure, which provides: "In all actions tried upon the facts without a

jury * * * findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses". Appendix p. 778.

The failure of the Court of Appeals to follow the admonition of Rule 52(a) is not in accord with decisions of this court. (See *United States* v. *National Ass'n of Real Estate Bds.*, 339 U.S. 485 at 495-496 and *United States* v. *Yellow Cab Co.*, 338 U.S. 338 at 341-342).

The trial court had two opportunities to observe the demeanor and to judge the credibility of the witnesses. The trial court clearly believed on the trial of the damage suit that the witness Foreman, former Administrator of the defunct union, was telling the truth when he said he had informed the Company that virtually all their employees had joined District 50. (Defendant's Appendix pp. 102-103).

Despite the District Court's factual findings that Tungsten had knowledge of the true situation, the Court of Appeals in effect supplies Tungsten with a doubt and, therefore, finds it was entitled to insist "upon a properly supervised secret ballot to determine the real, uncoerced wishes of its employees". This nonexistent doubt is supported by nonexistent threats of strike and violence in obtaining authorizations.

Under the controlling facts as found by the trial court, Tungsten had no doubt of the majority status of District 50 as representative of its employees. In *United Mine Workers of America* v. *Arkansas Oak Flooring Co.*, 351 U.S. 62 at 69, this court stated: "In the absence of any bona fide dispute as to the existence of the required majority of eligible employees, the

employer's denial of recognition of the union would have violated Sec. 8 (a) (5) of the Act".

At Page 75 of that opinion this court stated: "Under those sections and by virtue of the conceded majority designation of the union, the employer is obligated to recognize the designated union". Certain knowledge by the employer of majority designation surely equals a conceded majority.

While the instant case involves the question of a union's right to strike when another union has been certified and the *Arkansas Oak Flooring Company* case involved the right to strike where no union had ever been certified, that opinion announces principles of law which must be borne in mind in deciding this case. It makes clear the employer's duty to bargain with the majority-chosen representative when that employer has no doubt.

6. We submit the second question presented must be answered in the negative under accepted principles of statutory construction. The language of 303 (a) (3) necessarily implies the existence of a union to be certified. For the certification to continue effective, the union must continue to function. Just as there cannot be a gift without a donee nor a trust without a res, so there cannot be a live certification without a live union.

Under the Wagner Act, the Board held that the one-year certification period would not apply where the certified bargaining unit no longer exists or is inactive (See *Public Service Electric and Gas Company*, 59 NLRB 325 and *Nashville Bridge Company*, 49 NLRB 629).

Since the passage of the Taft-Hartley Law, the Board has recognized that a certified union may become defunct (See *WTOP, Inc.* 114 NLRB 194). The Board has held that absent unusual circumstances, the majority status of a certified union is conclusively presumed to continue for one year after certification and thereafter, the presumption is rebuttable and the employer in good faith may question the union's majority status. (See *District 50, United Mine Workers of America*, 106 NLRB 903 at 906 (Appendix p. 65a); *Celanese Corporation of America*, 95 NLRB 664 at 672 and 673; *N.L.R.B.* vs *Proof Co.* 242 F (2d) 560). In the case of *Brooks* vs *N.L.R.B.*, 348 U.S. 96, this court held that the employer was obligated to honor the certification for a reasonable period of time, normally one year.

We recognize that there is a difference between an employer justifying a refusal to bargain with a certified union because of unusual circumstances and a union justifying a strike where another union has been certified. The two are not identical, but the reasoning which protects the employer is persuasive. If the certification were effective under unusual circumstances, the employer would have no defense for his refusal to bargain. If the certification has ceased to be effective in the one case, why should it not be equally ineffective in the strike situation?

The Act does not set limits on the lifetime of a certification. Neither does the Act give perpetual existence to a certification. Absolutes are not to be sought after. In fact, the policy of an Act is to be studied in order to do away with absolutes. (See *Cox* vs *Roth*, 348 U.S. 207 at 209)

The language of Section 303 (a) (3) cannot be considered in isolation. The dominant purpose of the Act should be kept in mind (*U.S. vs C.I.O.*, 335 U.S. 106). It is not the mere letter of the law but the spirit which should be considered (*Holy Trinity Church v. U.S.*, 143 U.S. 457).

This court has recognized that statutes should be construed so as to carry out a remedial enactment in accord with the purpose of Congress. (See *Vermilya-Brown Co. vs Connell*, 335 US 377 at 390).

Careful consideration of the declaration of policy in Section 1 and the language of Section 7 shows that a dominant purpose of the Congress was to give workers full freedom of choice in the selection of the representatives for purposes of collective bargaining. The language of Section 13 protects the right to strike, except as specifically provided for in the subchapter in the Act.

The effect of the decision of the Court of Appeals is to deprive employees of that full freedom of choice which Congress took such great care to protect. The Stone Workers' union was unquestionably defunct. No fiction of survival should operate to subject the choice of living employees to the administrator of this defunct union. This case is not on all four's with *John L. Parks vs Atlanta Printing Pressmen*, 243 F(2d) 284. Judge Brown of the United States Court of Appeals for the Fifth Circuit wrote with strong feeling of the danger confronting an employer who had to make a decision. No doubt existed in the instant case that would create any danger of decision. We also believe that the decision in the *Parks case* goes much too far in denying to employees the right to

change their representative. Such a doctrine would reach an absurd result in many cases and would do that in the instant case.

CONCLUSION

WHEREFORE for the foregoing reasons we respectfully submit that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

CRAMPTON HARRIS
1018-19 First National Building
Birmingham 3, Alabama

CHARLES P. GREEN
Louisburg, North Carolina

YELVERTON COWHERD
900-15th Street, N. W.
Washington 5, D. C.

ALFRED D. TREHERNE
900-15th Street, N. W.
Washington 5, D. C.

Counsel for Petitioner

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURT CIRCUIT

No. 7293.

TUNGSTEN MINING CORPORATION, *Appellant*,

v.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA, *Appellee*.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh.

(Argued November 20, 1956. Decided February 12, 1957.)

Before PARKER, Chief Judge, SOBELOFF, Circuit Judge, and R. DORSEY WATKINS, District Judge.

Whiteford S. Blakeney (E. L. Fuller, Jr., and A. W. Gholson, Jr., on brief) for Appellant, and Banks Arendell, Yelverton Cowherd and Charles P. Green (Alfred D. Treherne and Armistead J. Maupin, on brief) for Appellee.

R. DORSEY WATKINS, District Judge:

Plaintiff-appellant Tungsten Mining Corporation (Tungsten) sued Defendant-appellee District 50, United Mine Workers of America (District 50) for damages under Section 303 of the Labor Management Relations Act, 29 U.S.C. Sec. 187 (a) (3) and 187 (b). Tungsten claimed

that in January 1953 District 50, through an unlawful strike, caused damage to Tungsten's business; and that the strike was unlawful because one of its objects was to force Tungsten to recognize District 50 as bargaining representative of Tungsten's employees, although at that time United Stone & Allied Product Workers of America, C.I.O. (Stone Workers) was then the labor organization certified by the National Labor Relations Board (Board) as exclusve collective bargaining representative for such employees. At the conclusion of the trial before the district judge, without a jury, judgment was entered in favor of District 50.

In April 1946 the Board conducted an election among Tungsten's employees and issued a certification in favor of Stone Workers. Shortly thereafter, Tungsten and Stone Workers executed a collective bargaining agreement which was followed by an uninterrupted succession of such agreements, the fourth of which was effective until January 15, 1953, and from year to year thereafter unless modified or terminated by 60 day notice. In October 1952 Holloman, an employee[1] in Tungsten's mines, with the help of District 50, organized the Tungsten Mining Local of District 50 at the Tungsten plant and Holloman was elected president of the new local.

While Tungsten Mining Local was being organized and thereafter, meetings were held with Tungsten's employees. At these meetings representatives of District 50 made a series of speeches in which they pointed out that District 50 did not use[2] the facilities of the Board to settle repre-

[1] He had been with Tungsten approximately two years, having started in a supervisory capacity. He began working in the mine, and joined Stone Workers about September-October 1952.

[2] United Mine Workers has consistently declined to comply with the filing provisions of 29 U.S.C. Sec. 159(f), (g) and (h). This precluded the parent, and District 50, from asking relief from, or being certified by, the Board. It did not, however, preclude District 50 from representing employees or acting as bargaining rep-

sentation questions and that District 50 would probably resort to a strike or series of strikes with picketing if it could not obtain recognition in any other way. After one of these meetings, statements were made by some of the employees that efforts to pass through a picket line might result in houses being dynamited "and things like that."

In October 1952 Robert Fohl, Regional Director of District 50, and Walter A. Shuey and Lucien L. Wood, Field Representatives of District 50, came to Tungsten and conferred with the vice president and general manager of Tungsten. These District 50 representatives asserted that their Union held authorizations from a majority of Tungsten employees. They stated that District 50 did not use the Board's facilities, but offered to have District 50's status verified through other media. They explained that where they were unsuccessful in obtaining representation by other means, they would resort to strike. Purported lists of requests that Stone Workers "no longer be the certified Bargaining Agent at the Tungsten Mining Corporation," of the withdrawal of check-off authorizations on behalf of Stone Workers, and of applications for membership in District 50, were mailed to Tungsten on January 21, 1953.

Shortly after the conference with the District 50 representatives, Tungsten examined its files and finding unrevoked dues deductions authorizations in favor of Stone Workers executed by more than a majority of employees in the unit, advised District 50 that Stone Workers had been certified by the Board as bargaining agent; that this certificaton had never been rescinded; and that Tungsten would continue to recognize Stone Workers until some

---

resentative for them. United Mineworkers of America v. Arkansas Oak Flooring Co., 1956, 351 U.S. 62, 76 S. Ct. 559, 100 L. Ed. 514; District 50, United Mine Wkrs. v. National Labor Rel. Bd., 4 Cir. 1956, 234 F. 2d 565, 571. This is immaterial upon the question of whether District 50 was at liberty to participate in a strike for recognition, if at the time Stone Workers was the certified representative.

other bargaining agent had been properly certified after an election duly held under the National Labor Relations Act. On October 30, 1952, District 50 wrote the Board, with a copy to Tungsten, reviewing in part the claims of District 50 and Tungsten, and concluding:

> "We are merely advising your Board of this situation as a matter of record because this Organization intends to fully support and protect the interests and desires of the workers of this Mining Company, by every moral and legal means at our disposal, including that of strike action, if necessary."

In November 1952 Stone Workers notified Tungsten that it wished to terminate the existing contract and proposed that a new contract be negotiated. Because of "raids" on the membership of Stone Workers, an administrator appointed pursuant to the Constitution of Stone Workers International Union, was sent to the plant to endeavor to bring the employees back into Stone Workers' organization. Largely[3] through the administrator's efforts, a new contract between Tungsten and Stone Workers was executed on December 18, 1952, to become effective on January 15, 1953, the terminal date of the current contract. On January 9, 1953 Tungsten discharged two employees, including Holloman, for alleged violation of working rules. They spoke to other employees of the company and a strike began at 6 p.m. At 7 p.m. representatives of District 50 arrived at the Tungsten plant. On January 10, Holloman and Fohl prepared a press release describing the strike as due to a spontaneous walk out because of the discharges which they attributed to union activity on behalf of District 50 by the discharged employees. The release also stated:

---

[3] The evidence is in conflict as to whether or not this agreement had been reached in New York, without consideration by Stone Workers other than through the administrator, or whether it was the result of real bargaining at Tungsten, in which other representatives of Stone Workers participated.

> "In addition to a strike for the two discharged workers, it will also be a strike for recognition of the United Mine Workers of America and a new contract with proper wages, hours and working conditions from January 15, 1953, on."

"On strike" signs were made available by District 50 fo the striking employees and after January 15, signs indicating that the strike was for recognition of District 50 were also supplied.

The strike was accompanied by violence, including the discharge of fire arms and dynamiting of a power pole. On January 14, 1953 the Superior Court of Vance County, North Carolina, issued a temporary restraining order directed against District 50, Holloman and others, enjoining interference with free ingress and egress; assaults, threats, abuse or damage; and also set up provisions with respect to picketing. This order was on the evening of January 14 read by Wood to the strikers, and Wood, in conjunction with State Police, laid out the picket stations in accordance with the order of court.

On January 15, 1953 Tungsten's old contract with Stone Workers expired and District 50 formally adopted the strike for purposes of recognition Strike headquarters were established at a rented building some distance from the mine. Bail was furnished through District 50 for persons arrested for acts of violence during the course of the strike. An injunction issued by the district court on February 3, 1953, to which further reference is made in this opinion, brought an end to the strike.

Tungsten's suit was brought under U.S.C. Title 29, Sec. 187, the pertinent parts of which read as follows:

> "(a) It shall be unlawful, for the purposes of this section only . . . for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike . . . where an object thereof is—
>
> * * * * *

> "(3) forcing or requiring any employer to recognize or bargain with a particular labor organization, as the representative of his employees if another labor organization has been certified as the representative of such employees . . .
>
> . . . . . .
>
> "(b) Whoever shall be injured in his business or property by reason or [of] any violation of subsection (a) of this section may sue therefor in any district court of the United States . . ."

Whether or not District 50 induced the employees of Tungsten initially to strike, it certainly encouraged them in the strike, and was itself engaged in the strike at least after January 14, 1953.[4] One of the purposes of the strike was to force or require Tungsten to bargain with District 50 as the representative of Tungsten's employees. During all the time in question, another labor organization, Stone Workers, had been certified by the Board as the exclusive collective bargaining representative of Tungsten's employees. That certification had not and has not been revoked.

The case would seem to come literally and exactly within the coverage of section 187 (a) (3) supra. Nevertheless the district court entered judgment for District 50 saying:

> "I am adjudging that District 50 is not liable to Tungsten because Stone Workers, despite its certification, was no longer a going concern, nor did it represent the overwhelming majority of Tungsten's employees—a situation of which Tungsten had every reason to be well aware . . ."

The proposition that despite the provision of section 187 (a) (3) making unlawful a strike having as "an object"

[4] The state court injunction of January 14, 1953, enjoined District 50, among others, from interfering with access to Tungsten's property; from the use of violence or threats; and from having more than six pickets posted at specified locations.

the forcing or requiring of any employer to recognize or bargain with a particular union if another labor organization has been certified as the representative of employees, such strike is not unlawful if the certified union (after one year from its certification) has ceased to represent a majority of the employees in the bargaining unit, was based completely and exclusively upon the decision in *Kennedy, Regional Director, National Labor Relations Board* v. *Warehouse & Distribution Workers Union, Local 688*; 37 L.R.R.M. 2496, (D.C. Mo., Jan. 27, 1956). That was an acton brought to enjoin an unfair labor practice proscribed by U.S.C. Title 29, Sec. 158 (b) (4) (c), the language of which is identical with section 187 (a) (3).

In the Kennedy case Coca-Cola Bottling Company Salesmen Association (Association) was duly certified as the exclusive bargaining representative of the employees of Coca-Cola Bottling Company of St. Louis, Missouri (Coca-Cola). A collective bargaining agreement was entered into between the Association and Coca-Cola on July 17, 1953 with an expiration date of November 1, 1955. Negotiations for a new contract were begun in June 1955 but no agreement was reached. On September 2, 1955, Warehouse & Distributors Workers Union, Local 688, (Local 688) filed with the National Labor Relations Board a petition for the election of a collective bargaining representative of the employees of Coca-Cola. Hearings on the petition here held but on October 25, 1955 before a decision had been handed down by the Board, Local 688 made demands on Coca-Cola for immediate recognition as the collective bargaining representative of the employees in Association, the certified unit, and further demanded that Coca-Cola negotiate a new agreement with Local 688 on the threat of a strike and picketing to enforce these demands. A strike was called by Local 688 on November 9, 1955 and pickets were maintained.

Association continued to function after October 24, 1955; Coca-Cola continued deduction of Association's mem-

bership dues from Coca-Cola employees wages and Association accepted such payments. Coca-Cola was at all times in possession of written authorizations for the check off of Association dues from a very substantial majority of Coca-Cola's employees, which authorizations had not formally been revoked in writing.

The court in the Kennedy case also found that by October 24, 1955, the Association had lost the support of a majority of the employees in the unit; that a majority had designated Local 688 as their bargaining agent; and that before the strike Coca-Cola, "while it may not have been convinced that" Local 688 "represented a majority of employees in the unit, had good cause to doubt, and did doubt, that the Association retained the support of a majority."

The crux of the decision is found in conclusions of law nos. 4, 5, and 6, quoted in full (except for citations) by the district court in this case, and conclusion no. 7, as follows:

> "4. Since the relief sought by petitioner is being denied on other grounds, it is not necessary to consider whether the Association's status, or its representation of the employees in the unit, had deteriorated to such an extent that the Association's certification should for this reason be regarded as totally ineffective. Cf. Public Service Electric & Gas Co., 59 N.L.R.B. 325, 15 LRRM 152; WTOP, Inc., 114 N.L.R.B. No. 194, 37 LRRM 1143; National Gas Co., 106 N.L.R.B. 819, 32 LRRM 1561; but cf. Cosentino v. District Council, 107 F. Supp. 235, 30 LRRM 2683 (D.C.P.R.).
>
> "5. Because the Association had, by November 9, 1955, when the Association's certification was more than one year old, lost the support of a majority of the employees in the bargaining unit, and the Company had at least a bona fide doubt that the Association retained the support of a majority, the Company was then no longer required by law to bargain collectively with the Association, but was free to 'refuse to bargain further with it.' Brooks v. National Labor Relations

Board, 348 U.S. 96, 104, 35 LRRM 2158; Celanese Corp., 96 N.L.R.B. 644. An object of Respondent's conduct, therefore, was to require the Company to violate its duty of neutrality between the Association and Respondent, e.g., National Labor Relations Board v. Indianapolis Newspapers, Inc., C.A. 7, 1954, 210 F.2d 501, 503, 33 LRRM 2536, not to require the Company to violate its duty to bargain with the certified union.

"6. Section 8(b) (4)-(c) of the Act proscribes strikes 'having as their purpose forcing any employer to disregard his obligation to recognize and bargain with a certified union and in lieu thereof to bargain with or recognize another union.'[5] H. Conf. Rep. No. 510, 80th Cong., 1st Sess.; see also S. Rep. No. 105, 80th Cong., 1st Sess.; 93 Daily Cong. Rec 7686; id. at 1910-1912, 3954. That section does not, as the Board contends, proscribe strikes directed toward compelling the employer to violate his duty of neutrality between two competing unions, nor does it proscribe strikes to gain an object (recognition) which could alternatively be gained, eventually, by means of the peaceful processes of the Board's election procedures, for it is not written in those terms, and there is no rational relation between these circumstances and the criterion established by the Act: whether 'another labor organization has been certified as the representative of (the) employees under the provisions of Section 9.' A strike is not rendered unlawful by the presence of such circumstances. See, e.g., Perry Norvell Co., 80 N.L.R.B. 225, 23 LRRM 1061; Tungsten Mining Corp., 106 N.L.R.B. 903, 909, 32 LRRM 1576; Address of former General Counsel Bott, May 13, 1954, 34 LRRM 78, 79; cf. S. Rep. No. 105, 80th Cong., 1st Sess., p. 22; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 43, 44; 98 Daily Cong. Rec. 4557, 4562-63. Accordingly Section 8(b) (4) (c) does not proscribe the conduct of Respondent in this case.

[5] The quotation is not of the statutory provision, but from House Conference Report No. 510, 80th Cong., 1st Sess. The consequence of ignoring the statutory language is discussed in detail below.

"7. The fact that Respondent's representation petition was already pending at the time of the strike does not render Respondent's conduct unlawful, because this circumstance has no bearing upon the terms of Section 8(B) (sic) (4) (C), and a contrary rule would discourage, rather than encourage, resort by the union to the peaceful election procedures of the Board."

After referring to these conclusions, the district judge in this case then pointed out that in *District 50, United Mine Wkrs. v. National Labor Rel. Bd.*, 4 Cir 1956, 234 F. 2d 565, this court had stated, with reference to a situation in which there was no certified union, that the maintenance of neutrality does not "*require*[6] that the employer refuse to recognize a bargaining agent chosen by a majority of his employees if such majority is so clearly established that there can be no true question with regard thereto." (234 F. 2d at p. 570). At almost the same time the Supreme Court, in another case not involving a certified union, the company's employees never having been represented by a union, held that upon proof of a majority "The company can, if it so wishes, lawfully recognize the union as the employees' representative." *Mine Workers v. Arkansas Flooring Co.*, 1956, 351 U.S. 62, 75, 76 S. Ct 559, 100 L. Ed. 477.[7]

---

[6] Emphasis here and throughout supplied, unless otherwise indicated.

[7] The language immediately following is: "That being so, there is no reason why the employees, and their union under their authorization, may not, under section 13, strike,[13] and, under section 7, peacefully picket the premises of their employer to induce it thus to recognize their chosen representative. See West Texas Utilities Co. v. Labor Board, 87 U.S. App. D.C. 179, 185, 184 F.2d 233, 239, and the other cases cited in note 6, supra.[14]" That this was spoken only in connection with the specific factual situation, in which there was no certified union, is made abundantly clear by the Supreme Court's footnote 14, reading:

"14. 'Present law in no way limits the primary strike for recognition except in the face of another union's certification.'

The district judge then referred to the "*right* of the employer" as a general rule, where the certification is more than one year old, to recognize another union holding a majority; expressed the opinion that "Tungsten was at *liberty*" to recognize District 50 upon clear proof of majority representation by it; and that Tungsten was "*free to recognize* District 50 in spite of the Board's certification of Stone Workers, but Tungsten preferred a contrary course, taking the position that it would recognize only a union certified by the N.L.R.B."

The district court then paraphrased the Kennedy decision and held that the object of District 50 was not "to force Tungsten to disregard its obligation to Stone Workers" but "to get Tungsten to realize and accept the fact that it was at that time *under no obligation* to Stone Workers . . . " This, the court held, relieved District 50 of liability under section 187 (b)—although the strike was, at least in part, for recognition.[8]

In *Parks* v. *Atlanta Printing Pressman & Assistants Union No. 8*, 30 Labor Cases, No. 70,095 (D.C. Ga., June 26, 1956), the court dismissed an action for damages for alleged violation of section 187 (a) (3). The court found that the certified union had been quite inactive: there had been no labor agreement for the years 1953, 1954, or 1955; no grievances had been processed; and while a wage increase had been negotiated in 1953, the certified union had not since that date attempted to bargain with the employer; and that it did not represent a majority. The court referred to the "difficult question . . . whether the defendant union

Report of the Joint Committee on Labor-Management Relations, No. 986, Pt. 3, 80th Cong., 2d Sess. 71; S. Report No. 105, 80th Cong., 1st Sess. 22; H. R. Conf. Report No. 510, 80th Cong., 1st Sess. 43."

[8] The district judge found: "On January 15, 1953, Tungsten's old contract with Stone Workers expired and District 50 formally adopted the six day old strike *for the purpose of getting recognition.*"

in this case was justified in calling the strike for recognition, more than a year after the other election, without obtaining a certification by the National Labor Relations Board of its status." The court referred to the Fifth Circuit decision in *National Labor Relations Board* v. *International Furniture Co.*, 212 F. 2d 431, that "the employer has a right to refuse recognition after the year [of certification] has passed where the refusal arises from a belief in good faith that the union does not represent a majority of the employees." (212 F. 2d at p. 433). The court also cited the Kennedy case, supra, and *Brooks* v. *National Labor Relations Board*, 1954, 348 U.S. 96, 104, 75 S. Ct. 176, 99 L. Ed. 125, and the statement by the Supreme Court that:

> "The Board has ruled that one year after certification the employer can ask for an election, or if he has fair doubts about the union's continuing majority, he may refuse to bargain with it. This too is a matter appropriately determined by the Board's administrative authority."[9]

The court in the Parks case recognized that "There is much language in" *National Labor Relations Board* v. *Sanson Hosiery Mills, Inc.*, 5 Cir. 1952, 195 F. 2d 350 "leading one to believe that the certification must be respected even after a year has passed." The court attempted, however, to distinguish the case on the ground that it related to a situation arising at a time when certification was held inviolable for two years.

In the Kennedy case; in the court below; and to some extent in the Parks case, the courts proceed upon the theory

---

[9] The Supreme Court's footnote to this quotation is:

> "18. Celanese Corp. of America, 95 N.L.R.B. 664. The Board has on several occasions intimated that even after the certification year has passed, the better practice is for an employer with doubts to keep bargaining and petition the Board for a new election or other relief. Id., at 674; United States Gypsum Co., 90 N.L.R.B. 964, 966-968; see also J. P. O'Neil Lumber Co., 94 N.L.R.B. 1299."

that if, after the period of one year, substantial evidence exists that the certified union no longer represents a majority, the employer *may*, without awaiting formal decertification, refuse further to deal with the certified union; that if there is substantial evidence that a rival union does represent a majority, the employer *must* on demand of such rival cease recognizing the certified union and deal with the rival; and if he does not, the rival can cause or participate in a strike to bring that condition about; but that this is not "forcing or requiring any employer to recognize or bargain with" the rival union, whether or not the rival union has been and is the certified collective bargaining agent.

We are not impressed with the inevitability of this reasoning or conclusion. It is founded upon the quotation and use by the court in the Kennedy case (conclusion of law no. 6, supra) of language from a House Conference Report instead of the language of the Act as passed. The court says that "Section 8 (b) (4) (C) of the Act proscribes strikes 'having as their purpose forcing any employer to disregard his obligation to recognize and bargain with a certified union and in lieu thereof to bargain with or recognize another union' . . ." The language of 8 (b) (4) (C) (29 U.S.C. sec. 158 (b) (4) (C)) in haec verba proscribes strikes "forcing or requiring any employer to recognize or bargain with a particular organization as the representative of his employees if another labor organization has been certified as the representative of such employees. . ."

The risk in glossing clear and simple language by reference to legislative history is strikingly illustrated by the substitution of words from House Conference Report No. 510 for the statutory language. Later, in speaking of the Senate amendment (in which the House concurred) this same House Conference Report No. 510 refers to the investigation by the Board of "any charge of unfair labor

practice within the meaning of paragraph (4) (A) (B) or (C) of section 8(B) of the conference agreement, which deals with certain boycotts and with certain strikes to *force recognition of uncertified labor organizations*. . . ."[10] Finally, in a footnote to the decision in *Mine Workers* v. *Arkansas Flooring Co., supra*, 351 U.S. at p. 75, the Supreme Court stated: "Present law in no way limits the primary strike for recognition *except in the face of another union's certification*," citing, among other references, this same House Conference Report No. 510.

The Fifth Circuit flatly held in *National Labor Relations Bd.* v. *Sanson Hosiery Mills*, 1952, 195 F. 2d 350, cert. den. 1952, 344 U.S. 863, 73 S. Ct. 103, 97 L. Ed. 669, that "a certification, when lawfully made, must be respected by the employer until changed conditions are reflected by a later ruling by the Board altering or setting aside the certification. This is true, even though the bargaining agent so designated has lost its majority representation of employees . . . "; "Nor can the employer decide for itself whether the Union has lost its bargaining status, and deciding that it has, refused to deal with it further. Whether or not the Union has lost that status is for the Board to determine upon orderly statutory procedure. *N.L.R.B.* v. *Prudential*, 6 Cir., 154 F. 2d 385, headnote 10. Meanwhile it is the duty of the employer to deal with the duly certified union." (195 F. 2d at 352-353).[11]

---

[10] U.S. Code Cong. Serv., 80th Cong. 1st Sess., p. 1163.

[11] This decision was followed in several cases by the Fifth Circuit until its decision in National Labor Relations Bd. v. International Furniture Co., 1953, 212 F. 2d 431, where in enforcing an order of the Board requiring an employer to bargain in good faith with the certified union, and the only one in the picture, where the employer as an afterthought had raised the question of loss of majority representation, that court said (at p. 433):

> "While there is a presumption that the majority status of the union continues after the year of certification, the employer has a *right to refuse recognition* after the year has passed

In *Teamsters Union and Lewis Food Company*, 115 N.L.R.B. 890, 37 LRRM 1421 (March 22, 1956), the Board issued a cease and desist order from engaging in unlawful picketing for recognition. On July 22, 1952, Association of Pet Food Manufacturers Employees was certified as bargaining representative of employer's production and maintenance employees. On September 11, 1952, a collective bargaining contract was executed, to expire in 1957. In August 1954, Teamsters Union began organizing employees in the certified bargaining unit, and by August 18 claimed a majority, demanded recognition and a contract, and stated that employer should join with the union in filing a petition with the Board to decertify the Association. Upon failure of the employer to comply, a strike was called. The Board found this to be a violation of section 158 (b) (4) (C) since it was designed to force the employer "to recognize" Teamster's Union "and bargain with it at a time when the unit of employees for which" Teamsters Union "sought recognition was covered by an outstanding certification existing in the Association." The Board also affirmed the rejection of Teamsters Union's affirmative defense that the strike was not violative of section 158 (b) (4) (C) "because the Association allegedly was illegally dominated at the time of its certification . . ." Presumably this, as loss of majority representation, while the basis for a decertification, could not in the Board's opinion permit a rival union to strike while the certification was outstanding.

---

where the refusal arises from a belief in good faith that the union does not represent a majority of the employees . . ."

In Cone Brothers Contract. Co. v. National Labor Rel. Bd., 5 Cir. 1956, 235 F. 2d 37, the employer was so doubtful concerning the validity of the Board-held election that it took "the forthright, albeit risky, course of declining to bargain as the means of testing its convictions . . . But in doing this, the Employer anticipated, as it came to pass, that the soundness of its claim of illegality would be determined in the inevitable (and present) Complaint Proceeding and not by self-help, which would be condemned. . . ."

But even if we should assume, concede, or agree, that after the first certification year an employer, if there be substantial evidence that the certified union has lost majority representation, *may* recognize a rival union, "may" is certainly not the equivalent of "must". To hold that an employer must cease recognition of a certified union, and recognize a rival, would seem totally inconsistent with the representation provisions of 29 U.S.C. Sec. 159 (c) (1) (B) under which a petition may be filed "by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the" exclusive representative.[12] It also would be inconsistent with the admonitory language of the Supreme Court in *Brooks* v. *National Labor Relations Board*, 1954, 348 U.S. 96, 75 S. Ct. 196, 99 L. Ed. 125, where the court said, at pages 103-104:

> "Petitioner contends that whenever an employer is presented with evidence that his employees have deserted their certified union, he may forthwith refuse to bargain. In effect, he seeks to vindicate the rights of his employees to select their bargaining representative. If the employees are dissatisfied with their chosen union, they may submit their own grievance to the Board. If an employer has doubts about his duty to continue bargaining, it is his responsibility to petition the Board for relief, while continuing to bargain in good faith at least until the Board has given some indication that his claim has merit.[13] *Although the Board may, if the facts warrant, revoke a certification* or agree not to pursue a charge of an unfair labor

[12] It might also completely eliminate the invocation of sec. 159 (c) (1) (A) under which a petition may be filed "by an employee or group of employees . . . alleging that a substantial number of employees . . . (ii) assert that the individual or labor organization, *which has been certified* or is being currently recognized by their employer as the bargaining representative, is no longer a representative . . ."

[13] At the time the strike occurred, Tungsten officials were conferring at the Winston-Salem Regional Office of the Board, "to talk with them about this situation . . ."

practice, *these are matters for the Board; they do not justify employer self-help or judicial intervention.* The underlying purpose of this statute is industrial peace. *To allow employers to rely on employees' rights in refusing to bargain with the formally designated union is not conducive to that end, it is inimical to it. Congress has devised a formal mode for selection and rejection of bargaining agents* and has fixed the spacing of elections, with a view of furthering industrial stability and with due regard to administrative prudence.

"We find wanting the arguments against these controlling considerations. In placing a nonconsenting minority under the bargaining resposibility of an agency selected by a majority of the workers, Congress has discarded common-law doctrines of agency. It is contended that since a bargaining agency may be ascertained by methods less formal than a supervised election, informal repudiation should also be sanctioned where decertification by another election is precluded. This is to make situations that are different appear the same."

The facts in the present case point up the risks inherent in the application of the theory that the employer would be entitled, or required, itself to determine correctly the wishes of its employees to reject a certified bargaining agent. It may be clear that a substantial majority of Tungsten's employees on paper favored District 50. Against this must be placed the facts that until January 22, 1954, no written evidence in support of this claim was in Tungsten's hands—indeed, it held unrevoked dues deduction authorizations in favor of Stone Workers, executed by more than a majority of its employees; it had paid in January 1954 the amount of such deductions to the administrator of Stone Workers for December 1953 deductions; the administrator of Stone Workers testified that upon coming to the plant he tried to rebuild that union from the raids upon it, and thought he had some success from the start; in fact, Stone Workers continued in existence down to the time of trial, February, 1956, at which time it had a contract with Tung-

sten, negotiated at the end of 1955, expiring January 15, 1958, and represented between seventy-five and eighty percent of Tungsten's employees; and, in proceedings before the National Labor Relations Board in 1954, Stone Workers was found to be the certified and functioning representative of Tungsten's employees. Add to this the fact that the authorizations relied upon by District 50[1] had been obtained in association with threats of strike and violence (which materialized), and it cannot be said that Tungsten acted improperly or unlawfully in insisting upon a properly supervised secret ballot to determine the real, uncoerced wishes of its employees.

We held that under these circumstances Tungsten was not legally obligated to recognize District 50 as the bargaining agent of its employees, in view of the outstanding certification of Stone Workers.

The appropriate Regional Director for the Board brought suit pursuant to 29 U.S.C. Sec. 160. (*l*) in the United States District Court for the District of North Carolina, for an injunction against Tungsten Local Union, United Mine Workers of America, Holloman, Fohl and District 50, United Mine Workers of America, "pending final adjudication of the Board of the matters involved." The court issued a decree, dated February 3, 1953, "upon consideration of the petition, respondents' oral answer thereto in open court, testimony, exhibits, evidence, oral arguments and briefs" from which it appeared to the satisfaction of the court "that there is reasonable evidence to believe that respondents have engaged in and are engaging in conduct in violation of Section 8(b), sub-section (4) (C)" of the National Labor Relations Act. The respondents were accordingly "restrained and enjoined, pending the final adjudication of this matter by the National Labor Relations Board" from:

---

[1] The reported cases, Board and court, attest the mercurial character of union membership, particularly where a new union enters the lists.

"Engaging in, or by picketing, order instructions, directions, appeals, threats, intimidation, coercion or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, inducing or encouraging the employees of the Tungsten Mining Corporation, or of any other employer, to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, where an object thereof is to enforce or require the said Tungsten Mining Corporation to recognize or bargain with respondent Tungsten Local Union, United Mine Workers of America, and/or respondent District 50, United Mine Workers of America, as the collective bargaining representative of any of the employees of said corporation in the unit for which the United Stone and Allied Products Workers of America, C.I.O. has been duly certified by the Regional Director of the National Labor Relations Board as the exclusive bargaining representative under the provisions of Section 9 of the National Labor Relations Act."

Respondents were further required to prepare and deliver press releases "stating that respondents have rescinded and withdrawn their demand that the Tungsten Mining Corporation shall recognize or bargain with respondents or any of them . . . and that respondents have directed their members to cease their strike and picketing at the mine and plant of the Tungsten Mining Corporation for the prescribed object above described . . ."

The following notice was given to members of Tungsten Local, District 50 United Mine Workers of America, and for release to the press and radio:

"Notice is hereby given that on February 3, 1953, Judge Don Gilliam issued an order, a copy of which is herewith attached for your information and guidance.

"Under the order District 50, UMWA, has no choice but to direct its members at Tungsten to 'cease their strike and picketing at the mine and plant * * * to

force or require the said Tungsten Mining Corporation to recognize or bargain with * * * Tungsten Local * * * as the collective bargaining representative of any of the employees of said corporation in the unit for which another union has been certified, which District 50 or its agents hereby does as directed. Under said order District 50 is commanded to withdraw its demand for recognition by the Corporation for collective bargaining purposes, which it likewise hereby does.

District 50, UMWA, intends to comply with the terms and conditions of this order or decree.

This 3rd day of February, 1953.
District 50 United Mine Workers of America

By /s/ Robert R. Fohl
Regional Director

/s/ Cordell Holoman"

On August 26, 1953, the Board issued its Decision and Order, 106 N.L.R.B. 903, In the Matter of District 50, United Mine Workers of America; Tungsten Mining Local of the United Mine Workers of America; Robert R. Fohl, Director, Region 19, District 50, United Mine Workers of America; William Cordell Holloman, President Tungsten Mining Local, United Mine Workers of America and Tungsten Mining Corporation. Whether or not respondents (other than Tungsten) had engaged in unfair labor practices directly required a decision as to whether Stone Workers was at the time of the strike a certified union under Section 8 (b) (4) (C) of the Act, and that this question of certification status at the time of the strike was directly involved and decided, is made abundantly clear from the following quotation[15] from the decision (106 N.L.R.B. 905-906):

"As stated above, Stone Workers was certified by the Board as the bargaining representative of the

[15] Footnotes 1, 2, and 3 to the Board's decision have, to avoid confusion with the footnotes to this opinion, been renumbered a, b and c respectively, and are as follows:

Company's employees in May 1946, and the strike for the recognition of the UMW occurred in January 1953. At issue before the Board, therefore, is whether Stone Workers was, at the time of the strike, still a 'certified' labor organization within the meaning of the quoted language of Section 8(b) (4) (C).

"That language places no time limitation on the duration of a certification otherwise entitled to the proctection of that section. Nor does the legislative history of the Act reveal that the Congress intended, or even considered, such a limitation.[a]

"The Respondents, however, contend in effect that the language of the statute should not be applied in this case. They argue that Stone Workers' certification was not valid in 1953 because 'the strike and majority participation [in the UMW] rebuts any presumption of such continued existing certification.' This contention is apparently founded upon the Board's doctrine with respect to an employer's obligation to bargain under Section 8 (a) (5) of this Act. In that context, the Board has held that the majority status of a certified union, absent unusual circumstances, is conclusively presumed to continue for 1 year after certification; thereafter, the presumption is rebuttable and the employer may in good faith question the union's majority status.[b]

"We need not, however, here decide whether or not this doctrine is applicable to Section 8 (b) (4) (C) of the Act. For even were we to concede that point, the Respondents' contention still would have no merit. There is no evidence in the record to show, as the Respondents assert, that a majority of the Company's employees participated in the recognition strike. The evidence shows only that there was a strike, that the Company continued to operate its mine, and that a

---

"[a] The history of the provision indicates only that Section 8 (b) (C) was intended to proscribe conduct, such as a strike, which bypasses the Board's machinery for the peaceful settlement of disputed representation questions. See H.R. Rep. No. 245, 80th Cong., 1st Sess. pp. 6, 44 (1947)."

"[b] See, e.g., Celanese Corporation of America, 95 NLRB 644."

number of employees did not participate in the strike. There is nothing else to show that UMW was the representative of a majority of the Company's employees either before or during the strike. In this connection, the record shows only that a bare claim was pressed upon the Company that the UMW represented the majority of its employees, but no supporting evidence thereof was adduced. Indeed, the only evidence there is on the question consists in the voluntary authorization of dues checkoffs in favor of Stone Workers, which supports, rather than rebuts, the presumption that the Stone Workers continued to be the majority representative of the Company's employees at the time of the strike.

"We need not and do not here determine whether there are any circumstances under which a union may lawfully strike for recognition if another union has once been granted a certificate which has not been superseded or revoked. We hold that, under the circumstances of this case, the certification was still outstanding and the strike for recognition was a clear violation of Section 8 (b) (4) (C)."

The Board then found that all respondents (other than Tungsten) were responsible "on and after January 10, for conducting a strike for recognition of UMW, thereby violating Section 8 (b) (4) (C) of the Act," and that they were responsible for coercive acts, thus violating Section 8 (b) (1) (4) of the Act. These respondents were ordered to cease and desist from (106 N.L.R.B. at p. 909):

"(a) Engaging in, or inducing or encouraging the employees of the Tungsten Mining Corporation to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or to perform any services, where an object there-

"Chairman Farmer is of the view that a union which strikes for recognition in the face of an outstanding certification—which is still recognized as valid by the employer and certified union—has no standing to contest the majority status of the certification. He is of the opinion that the statutory prohibition expressed in Section 8 (b) (4) (C) was intended in these circumstances to be absolute."

of is to force or require the Tungsten Mining Corporation to recognize or bargain with District 50, United Mine Workers of America, or with Tungsten Mining Local of United Mine Workers of America, or with United Mine Workers, as the representative of the employees of said Company, so long as United Stone and Allied Products Workers of America, CIO, or any labor organization other than District 50, United Mine Workers of America or Tungsten Mining Local of United Mine Workers of America, has been certified as the representative of such employees under the provisions of Section 9 of the Act."

The Order was enforced by a decree of this court entered without opinion on March 19, 1954.[16] The Order and Decision of the Board of August 26, 1953, and the decree of this court enforcing the Board's order, were not mentioned by the district judge in his opinion. In fact, the court struck from plaintiff's complaint herein all references to the proceedings before the Board on the ground that such allegations[17] were "irrelevant, immaterial and improper, and evidence in support of them would be inadmissible on the trial . . ." That court's own injunction of February 3, 1953, is referred to only as part of the statement of facts.[18]

In the absence of any explanation of record, we are forced to assume that the district judge considered that a

[16] District 50 did not, in the enforcement proceedings before this court, contest the Decision and Order of the Board, but contended that the Board's petition for enforcement should be denied because:

"1. The question is moot, and

"2. There has already been substantial compliance by [District 50] with the Board's order."

[17] These allegations related to the determination by the Board that District 50 had been guilty of an unfair labor practice. No specific reference was made to the certification question, although the complaint alleged that District 50 was "bound by the said decision and all findings and conclusions therein . . ."

[18] "A federal injunction was issued by this court on February 3, 1953, at which time the strike ended and representatives of District 50 sent copies of the injunction to all on strike, posted notices of it, and left the scene for good."

decision by the Board on the question of the status of Store Workers, as a certified union, at and during the strike, was not binding in a subsequent civil action for damages. It may be granted that there was no estoppel, as that term is technically defined,[19] in the Decision of the Board. Nevertheless, the Board was required to, and did, make a specific finding of fact on a matter within its jurisdiction. The Order, based upon such finding, was enforced by this Court.

The point for decision here was not involved in *Longshoremen* v. *Juneau Spruce Corp.* 1952, 342 U.S. 237, 72 S. Ct. 235, 96 L. Ed. 275. In that case the court held that a finding by the Board of an unfair labor practice through illegal picketing under Section 8 (b) (4) (D) was not a condition precedent to an action for damages under Section 303 (a) (4). It was in this connection that the court said (342 U.S. at pp. 243-244): "Sec. 8 (b) (4) (D) and Sec. 303 (a) (4) are substantially identical in the conduct condemned. Section 8 (b) (4) (D) gives rise to an administrative finding; see 303 (a) (4) to a judgment for damages. The fact that the two sections have an identity of language and yet specify two different remedies is strong confirmation of our conclusion that the remedies provided were to be exclusive of each other. Certainly there is nothing in the language of Sec. 303 (a) (4) which makes its remedy dependent on any prior administrative determination that an unfair labor practice has been committed. Rather, the opposite seems to be true . . ."

[19] But see A.L.I. Restatement, Judgments, sec. 68 (1), comments c, e, o, p; Sec. 69 (1).

But the issuance, and revocation, of certifications is entrusted expressly and solely[20] to the National Labor Relations Board, subject to judicial review in suits to enforce unfair labor practice orders. In this case, the Board determined that at the times in question, Stone Workers' "certification was still outstanding" within the meaning of Section 8 (b) (4) (C).

In *United Brick & Clay Workers* v. *Deena Artware*, 6 Cir. 1952, 198 F. 2d 637, cert den. 1952, 344 U.S. 897, 73 S. Ct. 277, 97 L. Ed. 694; reh. den. 1953, 344 U.S. 919, 73 S. Ct. 346, 97 L. Ed. 708, the court held that in a suit under Section 303 (b) a jury question was presented as to whether picketing by United was against Deena, and the purpose thereof. This "main issue" was "one of the issues involved collaterally" (198 F. 2d at p. 639) in *National Labor Relations Board* v. *Deena Artware*, 6 Cir. 1952, 198 F. 2d 645, in which the court enforced an order of the Board requiring Deena to cease and desist from interference and refusal to bargain. The same alleged secondary boycott; the basis of recovery in 198 F. 2d 637, was urged by Deena as a defense in 198 F. 2d 645. The court disagreed with the "ruling of the Board as a matter of law, and are of the opinion that whether the Union was guilty of a 'secondary boycott' . . . was a factual question . . . The Examiner found for the Union. The finding is supported by substantial evidence on the record considered as a whole, and is accepted on this review . . ." (198 F. 2d at p. 653).

In noting the inconsistency of the findings (after stating that "the issues presented by the two cases are not the

[20] Sunshine Coal Co. v. Adkins, 1940, 310 U.S. 381, 404, 60 S. Ct. 907, 84 L. Ed. 1263:

> "'Furthermore, where . . . Congress has created a special administrative procedure for the determination of the status of persons or companies under a regulatory act and has prescribed a procedure which meets all requirements of due process, that remedy is exclusive. See Anniston Manufacturing Co. v. Davis, 301 U.S. 337.'"

same, 198 F. 2d at p. 639), the court pointed out that the proceedings were heard by different fact finding agencies; the witnesses were not the same; and the cross-examination was by different attorneys.

Apart from the fact that the Board is the only body authorized to certify or decertify, there is an element in this case distinguishing it from any that have been called to our attention or disclosed by our own research. In this case it was stated by District 50's attorneys that in the hearing before the Board at which time the question was whether Stone Workers was a certified union within the meaning of the Act, and when the questions of majority status, and whether Stone Workers was a defunct union were involved, District 50 deliberately refrained from offering the very evidence (alleged requests that Stone Workers "no longer be the certified Bargaining Agent at the Tungsten Mining Corporation"; membership applications and check-off authorizations to District 50; and revocation of "voluntary dues assignment" to Stone Workers) relied upon as a defense to the damage suit.

We hold that under the facts of this particular case the deliberate withholding from the Board,[21] the body to which is entrusted the revocation of certifications, and procedure through which is the "formal mode for selection and rejection of bargaining agents" (*Brooks v. National Labor Relations Board*, 348 U.S. at p. 103; *National Labor Relations Bd. v. Sanson Hosiery Mills*, *supra*, 195 F. 2d at pp. 352-353) of these "facts" relied upon as a defense below, binds District 50, and prevents it from successfully defending this suit on the ground that at the times in question Stone Workers was not the certified bargaining agent of Tungsten's employees within the meaning of Section

[21] And therefore from this court in considering the Board's petition for enforcement of its order, the "transcript of the entire record in the proceedings" before the Board being before this court. 29 U.S.C. Sec. 160 (e).

303 (a) (3). As a consequence, the strike, and District 50's participation therein, were unlawful.

In remanding the case for further proceedings, we of course intimate no opinion on what, if any, damages are recoverable.

Reversed and Remanded

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7293

TUNGSTEN MINING CORPORATION, *Plaintiff-Appellant*,

v.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA,
Defendant-Appellee.

PETITION FOR REHEARING BY DEFENDANT-APPELLEE

To the Honorable Chief Judge and Honorable Judges of the United States Court of Appeals for the Fourth Circuit

District 50, United Mine Workers of America, by its counsel does very respectfully petition this court to grant it a rehearing in the above-styled cause and does petition the court upon such rehearing to withdraw the opinion of this court delivered February 12, 1957 and to vacate the order reversing and remanding the case and in lieu thereof to render an opinion sustaining and affirming the decision and judgment of the United States District Court for the Eastern District of North Carolina at Raleigh and to enter an order appropriate to such affirmance.

SUPPORTING ARGUMENT

GROUND NO. 1

The Opinion of the Court Is Based in Part Upon a Statement of Facts Not Supported by the Record

The following language appears on page 21 of the Opinion:

> "Add to this the fact that the authorizations relied upon by District 50[1] had been obtained in association with threats of strike and violence (which materialized), and it cannot be said that Tungsten acted improperly or unlawfully in insisting upon a properly supervised secret ballot to determine the real, uncoerced wishes of its employees."

There is not a word of testimony in either the Appendix of Plaintiff-Appellant or the Appendix of Defendant-Appellee in Case No. 7293 (the instant case) to justify the quoted statement.

The Decision and Order of the National Labor Relations Board in Case No. 11-CC-3 which came before this Court on a petition for enforcement of its order therein and bears the number 6738 in this Court, contains no statement of fact to support the quoted statement.

As a last resort, we read the 292 page transcript in the official report of the proceedings before the National Labor Relations Board. We found no testimony that supports the quoted statement. We did find in Volume 2 of the official report, the testimony of Benjamin Harrison Dalton beginning at page 179 which the petitioner for enforcement did not include in his Appendix. That witness did not connect the defendants with any threats of strike or violence in acquiring signatures to the authorizations.

The testimony of James Willard Pack at page 219 of Volume 2 of the official report of the proceedings does not connect the defendants with threats of force or violence in getting the signature to a single authorization.

If any signature had been obtained in association with threats of strike and violence, surely the man threatened would have been found in the interval between the collapse of the strike on February 3, 1953 and the National Labor Relations Board hearing beginning on March 3, 1953. The Company had had in its hands since January 22, 1953, the names of two hundred sixty-nine (269) of its employees who had signed official notice slips (Appendix of Defendant-Appellee, page 7).

The Intermediate Report of Mr. Wheatley, Trial Examiner in the National Labor Relations Board proceedings, nowhere connects this Petitioner with any threats of strike or violence in obtaining authorizations, although a person reading hurriedly lines 15-27 on page 8 of that report might become confused.

In this case, the chronology is all important. It was on October 16, 1952 at noon that Mr. Fohl informed Mr. Sweet, Vice-President and General Manager of Tungsten Mining Corporation, that a majority of the employees had signed up with District 50. We have been unable to find a scintilla of evidence that dates any threat of strike and violence prior to October 16th. The paragraph following the quotation and predicated upon it is, therefore, without such support.

GROUND NO. 2

The Statement in the Opinion: "We Hold That Under the Facts of This Particular Case the Deliberate Withholding From the Board,[21] the Body to Which Is Entrusted the Revocation of Certifications, and Procedure Through Which is the 'Formal Mode for Selection and Rejection of Bargaining Agents') Brooks v. National Labor Relations Board, 348 U.S. at P. 103; National Labor Relations Bd. v. Sanson Hosiery Mills, Supra, 195 F. 2d at pp. 352-353) of These 'Facts,' Relied Upon as a Defense Below, Binds District 50, and Prevents It From Successfully Defending This Suit on the Ground That at the Times in Question Stone Workers Was Not the Certified Bargaining Agent of Tungsten's Employees Within the Meaning of Section 303 (a)(3). As a Consequence, the Strike, and District 50's Participation Therein, Were Unlawful", Is Ground No. 2

We submit the following considerations in support of our belief that this language entitles Petitioner to a rehearing:

The quoted language does violence to basic and fundamental principles governing res judicata.

(a) In the first place, this Court said in Case No. 7107, *District 50, United Mine Workers of America, Petitioner, v. National Labor Relations Board, Respondent*, and Case No. 7122, *Pittsburgh Valve Company, Sterling Manufacturing Company, and Hardware Brass Manufacturing Company, Petitioners v. National Labor Relations Board, Respondent*, 234 F.(2d) 565:

> "Not only was the dismissal of the prior petition not based on that ground, but also it is well settled that the principle of res judicata has no application to such action of administrative agencies. *N.L.R.B. v. Baltimore Transit Co.*, 4 Cir., 140 F.2d 51, 54-55; *Wallace Corporation v. N.L.R.B.*, 4 Cir., 141 F. 2d 87, 91, aff. 323 U.S. 248, 253. See also *Pacific Greyhound Lines*, 9 N.L.R.B. 537, 573."

If a decision of the National Labor Relations Board is not res judicata as to the Board then a fortiori there is no

res judicata as to a superior authority; namely, a United States District Court. In this connection, see:

Utah Fuel Company v. *Industrial Commission*, 67 Utah 25, 245 P. 381, 45 A.L.R. 882.
30 Am. Jur. 909, 930, 951-953.
42 Am. Jur., p. 519.
Propper v. *John Bene & Sons, Inc., et al.*, 295 Fed. 769.

(b) Expressed otherwise, if the Decision and Order of the Board in the proceedings before it is not res judicata then the manner in which the union charged with an unfair labor practice conducts its defense before the Board should have no binding effect in a United States District Court.

(c) Three elements must combine to constitute res judicata. They are these: (1) The parties must be the same; (2) The subject matter must be the same; (3) The issues must be the same. This is clearly expressed in the North Carolina cases of:

Hardison v. *Everett*, 192 N.C. 371, 135 S.E. 288, and *McInturff* v. *Gahagan*, 193 N.C. 147.
See, also, 50 C.J.S., p. 18.

The introductory paragraph of Chapter 3 of A.L.I. restatement of judgments and the discussion thereafter in Chapter 4 do not eliminate these essential elements.

(d) Let us see, therefore, if there was an identity of parties in the unfair labor practice proceedings before the National Labor Relations Board which became the enforcement case numbered 6738 in this Court. The parties litigant therein are clearly stated in the last paragraph of the Complaint before the National Labor Relations Board (Case No. 11-CC-3) which reads:

"WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on the 10th day of February, 1953, issues this Complaint against District 50, United Mine Workers of America, Tungsten Mining Local of United Mine Workers of

America, Robert R. Fohl, Director, Region 19, District 50, United Mine Workers of America, and William Cordell Holloman, President Tungsten Mining Local, United Mine Workers of America, the Respondents, herein."

(e) The General Counsel, through his representative, was in control of the presentation of the Complainant's case. It is the theory of the law that the Board and the General Counsel were acting in the public interest and not to obtain money judgment or lay the foundation of a money judgment for the Tungsten Mining Corporation. In short, it was not a proceeding in behalf of Tungsten Mining Corporation.

When the enforcement proceedings came before this Court in case numbered 6738, the title of the case shows the Petitioner to be National Labor Relations Board and the Respondents to be District 50, United Mine Workers of America, including Robert R. Fohl and Tungsten Mining Local of United Mine Workers of America, including William Cordell Holloman.

In the instant case, the parties are simply Tungsten Mining Corporation, Plaintiff-Appellant and District 50, United Mine Workers of America, Defendant-Appellee.

(f) The two actions did not seek the same relief. One sought to stop an unfair labor practice, the other sought a money judgment for the individual plaintiff. In this connection, see:

Boeing Airplane Co. v. *Aeronautical Industrial District*, 91 F. Supp. 596, affirmed 188 F. 2d 356, certiorari denied 342 U.S. 821.

(g) Two simple and most apt examples illustrate the point we make as to parties and res judicata. They are:

(1) An automobile collision takes place between A's car and B's car. B is convicted in Recorder's Court of reckless driving. A thereafter sues B for damages

on account of wanton conduct. Innumerable times, courts have had to refuse to let A show B's conviction as any evidence whatsoever in the case.

(2) B assaults A and is convicted in the County Court of Misdemeanors for criminal assault. In A's suit against B for damages for assault and battery, innumerable times, courts have had to refuse to let A show B's conviction as any evidence whatsoever in the case.

REASONS FOR AN APPENDIX HERETO

The language of the Court set up as Ground No. 2 was due to statements made in response to questions from the members of the Court during the argument of this case. The paragraph of the Opinion preceding the language of Ground No. 2, does not purport to give the exact language of the statement of counsel for Petitioner. As an aid to this Court, we have set out in the Appendix the language used by counsel as accurately as it is possible for us to reproduce it.

(h) The chronology of the litigation will, we believe, help this Court to arrive at a just and correct decision. We, therefore, recapitulate:

January 9, 1953—Strike began.

January 14, 1953—Temporary Restraining Order issued by State Court.

January 24, 1953—Petition for Injunction in Aid of Process filed in the District Court of the United States for the Eastern District of North Carolina, Raleigh Division.

February 3, 1953—Temporary Injunction granted by Judge Gilliam in the said United States District Court.

February 3, 1953—Strike ends. Petitioner complies fully with injunction of the said United States District Court.

November 25, 1953—Petition for Enforcement filed in this Court.

December 3, 1953—Damage Suit filed in District Court of the United States for the Eastern District of North Carolina, Raleigh Division.

December 31, 1953—Answer to Petition for Enforcement filed.

The foregoing chronology shows that when the National Labor Relations Board proceedings came on to be heard on March 3, 1953, two injunctions, one state and the other Federal, had been issued and complied with.

This Petitioner had lost its effort to organize Tungsten Mining Corporation. The National Labor Relations Board could command Petitioner to do no more than it had already done. For the reasons stated to the Court on argument as shown by the Appendix, Petitioner did not appear by counsel.

When Petitioner filed its answer in the enforcement proceedings in Case No. 6738, the damage suit was pending. Petitioner summarized its position in the two short sentences cited in Footnote 16 on page 27 of the Opinion. This summary was preceded by nine pages of brief and argument.

(i) The language of the Opinion set up in Ground No. 2 announces in effect a completely new doctrine. It imposes a duty upon a union charged with an unfair labor practice to put on evidence. No such obligation is imposed by the statute. We have not been able to find any precedent placing such an obligation upon a labor union.

In some instances, employers have used the processes of the National Labor Relations Board to conduct a fishing expedition. If the holding in this case is allowed to stand, the union must bring in the fish and spread them out before a prospective claimant for damages.

The quoted language introduces a new theory of estoppel. Ordinarily, a man is estopped because his action or repre-

sentation leads his adversary to take action in reliance thereupon. We have found no evidence to indicate that Tungsten Mining Corporation took any action due to a false or misleading representation.

Where there is no legal duty to speak, silence, we submit, is no basis for an estoppel. If Petitioner had admitted the charges in the Board's proceedings that, of course, could have been introduced in evidence in the damage suit. However, page 11 of the official report of proceedings before the National Labor Relations Board shows an express denial of the paragraphs of the Complaint alleging violations of the Statute. Pages 46 and 48 of the official report show that a written denial was filed by this Petitioner. However, counsel for the Board in its Petition for Enforcement did not set that up as an exhibit.

(j) Evidently, the controlling testimony which had not been discovered at the time Case No. 6738 was heard in this Court, was the testimony on the trial of the damage suit of J. B. Foreman, the former Administrator for the Stone Cutters' Union.

Page 104 of the Appendix to Plaintiff-Appellant's brief shows Mr. Foreman was contacted on the Saturday before the Monday on which the trial of the damage suit began. The significant evidence he gave shows that he found a bad situation in that it appeared that a majority of the members of the Stone Cutters' Union had signed with District 50. (Defendant-Appellee's Appendix, p. 102) There was no question in his mind that a majority had signed up with District 50 and he believed he talked to Mr. Sweet and Mr. Long several times about the membership of the employees. He informed them relative to the membership and he did not feel there was any question in anybody's mind that the membership had signed with District 50 (Defendant-Appellee's Appendix, p. 103) and he thought the Stone Cutters had very few members, maybe five per cent (5%). (Defendant-Appellee's Appendix, p. 105).

At page 113 of the Plaintiff-Appellant's Appendix, Mr. Long contradicts Mr. Foreman. District Judge Gilliam saw both these witnesses and heard them testify. He could decide better than anybody else which man was telling the truth.

The proceedings before the National Labor Relations Board were not decertification proceedings. Formal certification and decertification is the prerogative of the National Labor Relations Board. Decertification is not the only way in which a certification can cease to be operative and effective. See, to this effect:

Public Service Electric & Gas Co., 59 N.L.R.B. 325.
WTOP, Inc., 114 N.L.R.B. No. 194.
National Gas Co., 106 N.L.R.B. 819.

The question, therefore, of whether the certification of the Stone Cutters was a live and functioning certification was one to be decided by Judge Gilliam in the damage suit.

GROUND NO. 3

The Opinion of the Court Deprives This Petitioner of Due Process of Law Guaranteed It by the Fifth Amendment to the Constitution of the United States

This Ground depends upon the soundness and validity of our previous argument. If the Court has placed upon this Petitioner a duty not required by law and denied it a defense because it did not perform that non-legal duty and if the Opinion deprives it of a trial according to accepted principles of res judicata, then Petitioner has been denied due process.

CONCLUSION

In conclusion, we respectfully submit that the Opinion departs from fundamental principles of law and confuses and joins together two separate proceedings which the Congress was very careful to keep apart. It reduces the dig-

nity of a United States District Court and makes it little more than a mere accountant for the National Labor Relations Board. The Act provides that the injured person may sue in any court of the United States. A suit implies that the claims of the plaintiff and the defenses of the defendant will be decided by the trial court in accordance with accepted principles of law. Under such principles, neither res judicata nor estoppel are applicable to the determination of this case.

For the foregoing reasons, Petitioner respectfully submits that a rehearing should be granted and the judgment of the lower court affirmed.

Respectfully submitted,

E. Crampton Harris
1018-19 First National Building
Birmingham, Alabama

Charles P. Green
824-827 Insurance Building
Raleigh, North Carolina

Banks Arendell
824-827 Insurance Building
Raleigh, North Carolina

Armistead J. Maupin
930 Insurance Building
Raleigh, North Carolina

Yelverton Cowherd
900 Fifteenth Street, N. W.
Washington 5, D. C.

Alfred D. Treherne
900 Fifteenth Street, N. W.
Washington 5, D. C.

Counsel for District 50,
United Mine Workers of America

APPENDIX TO PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 7293

TUNGSTEN MINING CORPORATION, *Appellant*,

v.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA, *Appellee*.

Appendix to Petition for Rehearing

CITY OF WASHINGTON }
DISTRICT OF COLUMBIA } ss

Before me the undersigned authority in and for the District of Columbia personally appeared Mr. Yelverton Cowherd known to me, who being by me first duly sworn deposes and says:

During the course of the argument in the City of Baltimore before the United States Court of Appeals for the Fourth Circuit, Chief Judge Parker asked several questions concerning reasons why District 50 did not make a fuller participation in the National Labor Relations Board case.

Our attorneys from North Carolina having had no occasion to discuss such points, and those decisions having been administrative determinations wholly within our legal department in District 50, I felt it incumbent upon me, and did rise and ask the Court to hear me. This was rather unusual but I obtained the permission of the Court by stating that the Court had brought on a situation which

was my responsibility and could only be answered by me and which was my decision.

Chief Judge Parker was obviously deeply interested and I told the Court that, as is always the case, when an injunction is filed against a union in its organizational stages the union is destroyed, and when a National Labor Relations Board order comes out against a union in such cases there is no punishment but simply a cease and desist, which for all practical purposes was in effect at the time.

I explained that there had been an "aid to process" injunction issued out of the Federal District Court in North Carolina at the request of the National Labor Relations Board which had completely stopped all union development at Tungsten, and we were, therefore, concerned only with the potential annoyance and costs that could arise against us out of litigation which had already been threatened openly by the management with claims of large damages; that because of this potential threatened law suit on our hands, I considered it advisable not to present a single witness who might be available or could be found for our side to be subjected to cross-examination from any source until the trial of that case. Accordingly, I advised our Field Staff that inasmuch as the "aid to process" injunction was outstanding and that the terms of that injunction were as full and complete as is ever required by a cease and desist order from the National Labor Relations Board in such cases and that that injunction had destroyed the Local Union, there could be no good accomplished by presenting any testimony before the Board; that it would be unwise in the face of the impending damage suit to offer any evidence in the hearing before the Board.

By the time the enforcement order came on for hearing before the United States Court of Appeals for the Fourth Circuit the damage suit was pending; we were already engaged in preparation of argument and motions and we

had no real reason to offer any objection, procedurally or factually at that time. Further, the controlling testimony that was ultimately introduced by us at the trial was not known to us at that time and was not heard about and discovered until a very short time prior to the trial itself, and was developed by our very latest associated attorney in North Carolina.

In response to questioning by Chief Judge Parker as to our reasons for not showing our authorization and check-off cards, I explained that the protection of the individual was of paramount interest to avoid discharges or other discriminations against persons who signed with our union, and explained that we always do, and did in this case, offer our authorization cards for examination or inspection by disinterested persons, principally ministers of the Gospel, and had done so with this company but this company would not even discuss the point.

Then Chief Judge Parker said, "Well, you did offer to exhibit the cards through those channels?" and I said, "Yes, sir. We certainly did."

YELVERTON COWHERD
Yelverton Cowherd

(SEAL)

Subscribed and sworn to before me
by the said Yelverton Cowherd this
8th day of March, 1957

MAGDELEN WESLEY
Notary Public

My Commission Expires April 14, 1960.

City of Washington
District of Columbia } ss

Before me the undersigned authority in and for the District of Columbia personally appeared Mr. Alfred D. Treherne known to me, who being by me first duly sworn deposes and says:

I am of counsel in the case above referred to by Mr. Cowherd and was in the court room during the presentation and argument therein referred to. I heard all of the queries of the Court and the answers made. I have read Mr. Cowherd's affidavit in full and state that it is accurate.

Alfred D. Treherne
Alfred D. Treherne

(Seal).

Subscribed and sworn to before me
by the said Alfred D. Treherne this
11th day of March, 1957

Eliza Crump
Notary Public

My Commission Expires June 15, 1958.

Before me the undersigned authority in and for the County of Wake, State of North Carolina personally appeared Mr. Charles Green known to me, who being by me first duly sworn deposes and says:

I am of counsel in the case above referred to by Mr. Cowherd and was in the court room during the presentation and argument therein referred to. I heard all of the queries of the Court and the answers made. I have

read Mr. Cowherd's affidavit in full and state that it is accurate.

CHARLES P. GREEN
Charles P. Green

(SEAL).

Subscribed and sworn to before me by the said Charles Green this 12th day of March, 1957

MAXINE M. MORSE
Notary Public

My Commission expires March 1, 1959.

Before me the undersigned authority in and for the County of Wake, State of North Carolina personally appeared Mr. Armistead J. Maupin known to me, who being by me first duly sworn deposes and says:

I am of counsel in the case above referred to by Mr. Cowherd and was in the court room during the presentation and argument therein referred to. I heard all of the queries of the Court and the answers made. I have read Mr. Cowherd's affidavit in full and state that it is accurate.

ARMISTEAD J. MAUPIN
Armistead J. Maupin

(SEAL)

Subscribed and sworn to before me by the said Armistead J. Maupin this 12th day of March, 1957

MAXINE M. MORSE
Notary Public

My commission expires March 1, 1959.

Before me the undersigned authority in and for the County of Wake, State of North Carolina personally appeared Mr. Banks Arendell known to me, who being by me first duly sworn deposes and says:

I am of counsel in the case above referred to by Mr. Cowherd and was in the court room during the presentation and argument therein referred to. I heard all of the queries of the Court and the answers made. I have read Mr. Cowherd's affidavit in full and state that it is accurate.

BANKS ARENDELL
Banks Arendell

(SEAL)

Subscribed and sworn to before me
by the said Banks Arendell this
12th day of March, 1957

MAXINE M. MORSE
Notary Public

My commission expires March 1, 1959.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7293

TUNGSTEN MINING CORPORATION, *Plaintiff-Appellant,*

v.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA,
Defendant-Appellee.

Petition for Rehearing by Defendant-Appellee.
Certificate of Counsel

We, E. Crampton Harris, first appearing as counsel for District 50, United Mine Workers of America, on the foregoing Petition for Rehearing and Charles P. Green appearing as counsel for District 50, United Mine Workers of America both on the foregoing Petition for Rehearing and on the original submission and argument of the cause in the United States Court of Appeals for the Fourth Circuit do, pursuant to Rule 19 of this Court and in support of the foregoing Petition for Rehearing, each hereby certify that we are of counsel as above stated and do further certify that the foregoing Petition for Rehearing is filed in good faith and not for delay.

E. CRAMPTON HARRIS
E. Crampton Harris

CHARLES P. GREEN
Charles P. Green

Counsel for District 50, United Mine Workers of America, Petitioner and Defendant-Appellee

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7293

TUNGSTEN MINING CORPORATION, *Plaintiff-Appellant,*

v.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA,
Defendant-Appellee.

Certificate of Service

I hereby certify that I have deposited in the United States Post Office with sufficient air mail postage thereon to insure delivery a copy of the Petition for Rehearing in the above styled case, with the Appendix thereto and a copy of the supporting certificate of counsel that it is filed in good faith and not for delay properly addressed to counsel for Plaintiff-Appellant as follows:

F. L. Fuller, Jr., Esq.
Durham, North Carolina

A. W. Gholson, Jr., Esq.
Henderson, North Carolina

Whiteford S. Blakeney, Esq.
Charlotte, North Carolina

Done this _____ day of March, 1957.

.....
Counsel for District 50,
United Mine Workers
of America

Filed March 26, 1957

UNITED STATES COURT OF APPEALS,
FOR THE FOURTH CIRCUIT

No. 7293

TUNGSTEN MINING CORPORATION, *Appellant*,

v.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA, *Appellee*.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh.

This Court having rendered its decision reversing the decision of the United States District Court for the Eastern District of North Carolina, and the appellee having on March 13, 1957, filed with the Court a petition for a rehearing of said cause, and same having been fully considered:

It is now here ordered that the rehearing asked for be and same is hereby denied.

JOHN J. PARKER
Chief Judge, Fourth Circuit.

SIMON E. SOBELOFF
United States Circuit Judge.

R. DORSEY WATKINS
United States District Judge.

A true copy,

Teste:

RICHARD M. F. WILLIAMS, JR., *Clerk,*
U. S. Court of Appeals for the Fourth Circuit.

Opinion and Judgment of District Court

I heard the evidence in this civil action without a jury. The plaintiff's prayer for judgment grew out of a strike of the employees of the plaintiff at its tungsten mine and processing mill located in Vance County, North Carolina. What follows is a chronological summary of the pertinent events, as I find them from the evidence.

Tungsten Mining Corporation, referred to as "Tungsten"; and United Stone & Allied Products Workers of America, C.I.O., referred to as "Stone Workers", after an election, entered into a collective bargaining agreement on April 3, 1946. Stone Workers was certified by the National Labor Relations Board as the Collective Bargaining Representative of the employees of Tungsten. Contracts between Tungsten and Stone Workers were always in force from May 15, 1946, until January 15, 1953. Tungsten and Stone Workers changed the anniversary date to January during the interim to have it approximately coincide with the calendar year for their mutual convenience.

William Holleman and many of his fellow workers had become dissatisfied with the representation afforded them by Stone Workers. In October, 1952, Holleman contacted Frank Lumpkin, a relative, of Hopewell, Virginia, employed at the Hercules Powder Company; and the two discussed the process of changing unions. The union at Hercules Powder Company was District 50, United Mine Workers of America, the defendant before me, referred to as "District 50". Shortly after Holleman made this inquiry, W. A.

Shuey, an officer of the Hercules Local, visited Tungsten, talked with Holleman, and supplied application cards for membership in District 50.

An organizing campaign launched by Holleman proved to be a success. In short order, 286 of Tungsten's approximately 400 employees signed up with District 50. Of these 286, 269 who had been members of Stone Workers also signed forms to sever relations with that union and cancel their dues checkoff authorization held by the Company.

About the middle of October, 1952, Robert Fohl, Regional Director for the United Mine Workers; Lucian Wood, Field Representative for District 50; and Shuey came to Tungsten and conferred with James R. Sweet, Vice President and General Manager of Tungsten. The District 50 representatives informed Sweet of their union's majority status at Tungsten. They explained to him that union's avoidance of the National Labor Relations Board's facilities and offered to have District 50's status verified through the medium of some other disinterested third party. Local ministers and the North Carolina Department of Labor were suggested. There was, of course, no offer or request for the membership lists to be handed over directly to Tungsten.

A few days later, J. B. Foreman, a national representative of Stone Workers, arrived on the scene. He came in the capacity of Administrator of the Tungsten Local, having been appointed by Sam Scott, President of Stone Workers International, under a clause in the Stone Workers' constitution that provides for such an appointment in the event that a crisis is found to exist in a local. Foreman quickly lost any doubts he may have held as to the existence of a crisis. At a meeting of the majority of Tungsten's employees he was shouted down without a chance to make himself heard. Inquiry among the workers convinced him that virtually all had joined District 50, and he so informed the Company.

On November 13, 1952, George Pendley, Secretary of Stone Workers Local, sent to Tungsten a letter advising that the contract with Stone Workers, due to expire January 15, 1953, should not be renewed. Copies were sent to Stone Workers and the National Labor Relations Board.

W. L. Long, Vice President and General Counsel of Tungsten, and Sweet were uncertain what course Tungsten should follow in the situation that confronted them. In particular, they were puzzled by Foreman's claimed power to act for the Stone Workers. Long and Sweet attended a company meeting in New York in December. It was arranged for them to confer while there with an attorney for the Stone Workers from Boston. Foreman and Scott were also present at this conference.

Long and Sweet were readily convinced of Foreman's capacity to act for the Stone Workers Local in negotiating with Tungsten. Whether or not substantial agreement was reached there about a new contract is not at all clear from the evidence. Each of those present who testified before me had his own version of what was said and done in that New York hotel room more than three years before the trial. Regardless of where the negotiations were had, Tungsten and Stone Workers did enter into a new contract a few days later.

Through December and the early days of January, 1953, District 50 meetings and organization continued. Tungsten made no effort whatsoever to accurately evaluate the obvious situation of which it had full and ample notice. Before and during the strike Tungsten steadfastly refused to even consider that the Stone Workers Local was a defunct organization. Instead, by the testimony of its officers, Tungsten placed its reliance on three principal factors: (1) Advice from the N.L.R.B., which was completely out of touch with the situation; (2) Between 250 and 270 dues checkoff authorizations that it still held; (3) Stone Workers' N.L.R.B. Certification, which was more than six and one-half

years old. Long, as General Counsel of Tungsten, was (and still is) of the opinion that Tungsten should refuse to bargain with any union not certified by the N.L.R.B.

On January 9, 1953, the storm broke. Holleman, who was then President of the unrecognized District 50 Local, was working in the mine with James Knight, Secretary of the new organization. The two were doing carpentry work in an overhand stope. About 11:30 A.M., it became necessary for them to descend to the tunnel beneath to cut a piece of lumber for their work in the stope. This done, they proceeded to eat their lunch before the regulation noon lunch hour. The assistant mine foreman and the shaft boss arrived. Holleman and Knight were fired on the spot.

They left the premises and began to meet employees on the next shift, and word of their discharge spread. By early evening a fullfledged strike was in progress. The days that followed were characterized by large scale confusion about the gates to the mine and the surrounding countryside. The confusion was attended by violence and rowdyism. On January 14, an order from the North Carolina Superior Court limited the number of pickets about the gate to six and forbade others from approaching within a hundred feet. A defendant named in that court order was District 50.

Fohl and Wood were about the scene of the strike frequently before the restaining order was issued which named their organization as a defendant. When these District 50 representatives learned that Holleman and Knight had been fired, they advised the two to present their grievance to Tungsten under the Stone Workers' contractual procedure. Holleman and Knight declined to do so, insisting that such a move would be futile. Wood was present on the night of the fourteenth when the restraining order was served. He assisted a Highway Patrolman in stepping off the one hundred feet specified in the order.

On January 15, 1953, Tungsten's old contract with Stone Workers expired and District 50 formally adopted the six day old strike for the purpose of getting recognition. Strike headquarters was established at a rented building some distance from the mine. The union furnished picket signs demanding recognition. At all times, before and after the fifteenth, District 50 representatives cautioned strikers against violence. A federal injunction was issued by this Court on February 3, 1953, at which time the strike ended and representatives of District 50 sent copies of the injunction to all on strike, posted notices of it, and left the scene for good.

Tungsten's action against District 50 is founded on Title 29, U.S.C.A. Sec. 187. The pertinent sections of that statute read as follows: "(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service, where an object thereof is—(3) *forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of Section 159 of this title;* (b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of Section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

The language above is found also in Section 158(b)(4)(C). In this section the action defined in the repeated lan-

guage is proscribed as an unfair labor practice for which an injunction is the appropriate remedy. Interpretations of this key language in the context of Section 158 are persuasive for determining the meaning in the context of Section 187. Such an interpretation was recently made in *Ralph E. Kennedy, Regional Director of the Fourteenth Region of the National Labor Relations Board* v. *Warehouse & Distribution Workers Union, Local 688*, 29 C.C.H. Labor Cases 69736 (D.C. Mo., 1956). The facts of this case are readily seen to present a striking parallel to those of the case at bar.

Following an election by secret ballot, Coca-Cola Bottling Company Salesmen Association (herein called Association) was duly certified as the exclusive bargaining representative of the employees of Coca-Cola Bottling Company of St. Louis, Missouri, (herein called Coca-Cola). A collective bargaining agreement was entered into between Association and Coca-Cola on July 17, 1953, providing for its expiration on November 1, 19[illegible]. Negotiations for a new contract were commenced in June, 1953, but none was agreed upon.

On September 2, 1955, respondent Warehouse & Distribution Workers Union, Local 688 (A.F.L.), (herein called Local 688), filed with National Labor Relations Board a petition for election of collective bargaining representative of the employees of Cola-Cola. Hearings on the petition were held. This procedure for recognition was closed to the defendant before me, District 50, because of its well known refusal to bare its affairs to public scrutiny. However, in *United Mine Workers of America* v. *Arkansas Oak Flooring Company*, decided April 23, 1956, 351 U.S. 62, the United States Supreme Court made it clear that the National Labor-Management Relations Act "does not make it a condition that the representative . . . shall be certified by the Board, or even be eligible for such certification." District 50 U.M.W.A. v. N.L.R.B., 4th Circuit, decided June 5, 1956.

About October 25, 1955, while a decision on the petition was pending, Local 688 made demands on Coca-Cola for immediate recognition as the collective bargaining representative of the employees in the certified unit (Association) and that Coca-Cola negotiate a new agreement with Local 688, the latter union threatening to strike and picket Coca-Cola's premises to enforce its demands. Coca-Cola rejected such demands. All this occurred in the face of the certification of Association and before decertification.

Local 688 called the threatened strike on November 9, 1953, and the strike and picketing continued thereafter.

Association continued to function after October 24, 1955; Coca-Cola continued to deduct Association's membership dues from employees' wages and Association continued to accept the payments of such dues checked off; and Coca-Cola was at all times in possession of authorizations for check off of Association dues which had not been formally revoked in writing from about 173 of Coca-Cola's approximately 196 employees.

Judge Moore found two other important facts as follows:

"(a) Whatever may have been the membership of the employees, by October 24, 1955, the Association had clearly lost the support of a majority of the employees in the unit, and a majority had voluntarily designated Respondent as the agent, they desired to be their collective bargaining representative. Respondent retained the voluntary allegiance of a majority of the employees in the unit until the trial in this case.

"(b) Before the time of the strike the Company, while it may not have been convinced that Respondent represented a majority of employees in the unit, had good cause to doubt, and did doubt, that the Association retained the support of a majority."

Upon the foregoing facts Judge Moore rendered his decision, based on these conclusions among others:

"Since the relief sought by petitioner is being denied on other grounds, it is not necessary to consider whether the Association's status, or its representation of the employees in the unit, had deteriorated to such an extent that the Association's certification should for this reason be regarded as totally ineffective.

"Because the Association had, by November 9, 1955, when the Association's certification was more than one year old, lost the support of a majority of the employees in the bargaining unit, and the Company had at least a bona fide doubt that the Association retained the support of a majority, the Company was then no longer required by law to bargain collectively with the Association, but was free to "'refuse to bargain further with it.'" *Brooks* v. *National Labor Relations Board*, 348 U.S. 96, 104 — — —. An object of Respondent's conduct, therefore, was to require the Company to violate its duty of neutrality between the Association and Respondent — — — — not to require the Company to violate its duty to bargain with the certified union.

"Section 8(b)(4)(C) of the act proscribes strikes "having as their purpose forcing any employer to disregard his obligation to recognize and bargain with a certified union and in lieu thereof to bargain with or recognize another union". — — — — That section does not, as the Board contends, proscribe strikes directed toward compelling the employer to violate his duty of neutrality between two competing unions, nor does it proscribe strikes to gain an object (recognition) which could alternatively be gained, eventually, by means of the peaceful processes of the Board's election procedures, for it is not written in those terms, and there is no rational relation between these circumstances and the criterion established by the Act: whether 'another labor organization has been certified as the representative of (the) employees under the provisions of Section 9.' A strike is not rendered unlawful by the presence of such circumstances. — — — — Accordingly

Section 8(b)(4)(C) does not proscribe the conduct of Respondent in this case.

"The petition for an injunction should therefore be denied."

To my mind Judge Moore's opinion from which I have quoted at length is sound and, if followed, completely determinative of the case now before me.

The cases hold that while two unions are vying for recognition the employer is obligated by law to remain neutral; but, as pointed out in *District 50 U.M.W.A.* v. *N.L.R.B.* above cited, this does not "require that the employer refuse to recognize a bargaining agent chosen by a majority of his employees if such majority is so clearly established that there can be no true question with regard thereto." And also under the cases this right of the employer exists as a general rule where there has been a certification by the Board following an election, provided that one year has elapsed since the certification. Here, about six years had passed since the certification and I am of the opinion that Tungsten was at liberty to recognize District 50 upon clear proof that a majority of the employees was in January, 1953, committed to that union and had repudiated Stone Workers. This unquestionably was the situation and Tungsten was on notice. Tungsten really makes no attack on the large "sign up" which had been obtained by District 50 and there is no vestige of proof or even a suggestion that the signatures on the cards were not authentic. The record indicates that Tungsten had no hand in switching employees from Stone Workers to District 50. So that, it is my view that Tungsten was free to recognize District 50 in spite of the Board's certification of Stone Workers, but Tungsten preferred a contrary course, taking the position that it would recognize only a union certified by the N.L.R.B. Such position was without justification in law, as above pointed out.

Fairly considered, it seems to me, the action of defendant in adopting the strike, after the termination of the contract between Tungsten and Stone Workers, when in fact Stone Workers was no longer the choice of the employees as bargaining agent, should not be held to be in violation of the statute. No other avenue of relief was open to the defendant and the majority of the employees which it represented. Recourse to the Board was not available, but, as held in *U.M.W.A.* v. *Arkansas Oak Flooring Co.*, above, and other cases, defendant was not precluded from representing employees as bargaining representative. It should not be held on the facts here that defendant's object was to force Tungsten to disregard its obligation to Stone Workers. The object was rather to lead Tungsten away from the generally prevailing obligation of neutrality where a real contest between two unions is on, to cause it to act in the light of realities, to get Tungsten to realize and accept the fact that it was at that time under no obligation to Stone Workers, which was no longer the bargaining agent "designated or selected for the purpose of collective bargaining by the majority of the employees."

I am adjudging that District 50 is not liable to Tungsten because Stone Workers, despite its certification, was no longer a going concern, nor did it represent the overwhelming majority of Tungsten's employees—a situation of which Tungsten had every reason to be well aware. In view of this holding, it is unnecessary to discuss or decide the question of agency under Title 29, U.S.C.A., Section 185, or the question of liability for wildcat strikes that are adopted by a defendant union.

In accord with the foregoing opinion, it is hereby ordered, adjudged, and decreed that the plaintiff Tungsten Mining Corporation recover nothing of the defendant District 50, United Mine Workers of America by this action. It is further ordered that the defendant recover of the

plaintiff the defendant's costs incurred in the defense of this action.

s/ Don Gilliam
United States District Judge

EXHIBIT D-10

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA RALEIGH DIVISION

Civil No. 670

Reed Johnston, Regional Director of the Eleventh Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board,
Petitioner

vs.

Tungsten Local Union, United Mine Workers of America, a recently organized labor organization consisting of Cordell Holloman and others, Cordell Holloman, its agent, District 50, United Mine Workers of America, and Robert R. Foil, its agent,
Respondents

Decree

This cause came on to be heard upon the verified petition of Reed Johnston, Regional Director of the Eleventh Region of the National Labor Relations Board, on behalf of said Board, pursuant to Section 10 (l) of the National Labor Relations Act as amended, for an injunction pending final adjudication of the Board of the matters involved, and upon an order to show cause why injunctive relief as prayed should not be granted. The Court, upon consideration of the petition, respondents' oral answer thereto in open court, testimony, exhibits, evidence, oral arguments and briefs, duly made and entered its findings of fact and conclusions of law. It appearing to the satisfaction of the Court that there is reasonable cause to believe that respondents have

engaged in and are engaging in conduct in violation of Section 8 (b), sub-section (4) (C) of the said Act, and that such acts and conduct affect commerce within the meaning of Section 2, sub-sections (6) and (7) of the Act, Now Therefore,

It Is Ordered, Adjudged and Decreed as follows:

1. That respondents Tungsten Local Union, United Mine Workers of America, a recently organized labor organization consisting of Cordell Holloman and others, Cordell Holloman, its agent, District 50, United Mine Workers of America, and Robert R. Fohl, its agent, and each of them, and their officers, representatives, agents, servants, employees, attorneys, members and all persons in active concert or participation with them, be and they hereby are restrained and enjoined, pending the final adjudication of this matter by the National Labor Relations Board, from:

Engaging in, or by picketing, order, instructions, directions, appeals, threats, intimidation, coercion or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, inducing or encouraging the employees of the Tungsten Mining Corporation, or of any other employer, to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, where an object thereof is to force or require the said Tungsten Mining Corporation to recognize or bargain with respondent Tungsten Local Union, United Mine Workers of America, and/or respondent District 50, United Mine Workers of America, as the collective bargaining representative of any of the employees of said corporation in the unit for which the United Stone and Allied Products Workers of America, C.I.O. has been duly certified by the Regional Director of the National Labor Relations Board as the ex-

clusive bargaining representative under the provisions of Section 9 of the National Labor Relations Act.

2. Respondents shall forthwith notify all members of respondent Tungsten Local Union, United Mine Workers of America by mailing letters to their respective last known places of residence and by posting notices for thirty days at all places where said respondent Tungsten Local Union conducts its business or where notices to its members are customarily posted, of the terms and provisions of this decree and directing that its members shall cease their strike and picketing at the mine and plant of the Tungsten Mining Corporation for the prescribed object above described, and that pending final adjudication of this matter by the Board, all orders, instructions, directions, rules or regulations contrary to the terms of this decree are revoked, rescinded and withdrawn.

3. Respondents shall forthwith prepare a written press release stating that respondents have rescinded and withdrawn their demand that the Tungsten Mining Corporation shall recognize or bargain with respondents or any of them, and stating respondents' intention to comply with this decree and that respondents have directed their members to cease their strike and picketing at the mine and plant of the Tungsten Mining Corporation for the prescribed object above described. Respondents shall deliver signed copies of such press release for publication to the newspapers, radio stations and other media of news communication through which the respondents caused publication of their demands upon said corporation for recognition and bargaining and of the purposes and objects of the strike at the said corporation about January 12, 1953.

4. Respondents, and each of them, shall file with this Court, within thirty days after service of a copy of this decree upon them, a sworn statement showing in detail the steps taken by them to comply with this decree.

5. Jurisdiction of this cause is retained for the purpose of giving full effect to this decree, and for the purpose of making such further and other orders and decrees as may be necessary herein.

Done at Raleigh, North Carolina, this 3 day of February, 1953.

/s/ Don Gilliam, *Judge*
United States District Judge.

A true Copy, Teste:

A. Hand James, *Clerk*

By /s/ Keen Jones
Deputy Clerk.

---

106 NLRB No. 153 D-7625
Vance County, N. C.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 11-CC-3

In the Matter of

District 50, United Mine Workers of America: Tungsten Mining Local of the United Mine Workers of America: Robert R. Fohl, Director, Region 19, District 50, United Mine Workers of America: William Cordell Holloman, President Tungsten Mining Local, United Mine Workers of America

and

Tungsten Mining Corporation

Decision and Order

On May 13, 1953, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recom-

mending that they cease and desist therefrom and take certain affirmative action as set forth in the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief; the General Counsel filed a brief in support of the Intermediate Report, and an exception to the posting provisions of the Trial Examiner's recommended order; and Tungsten Mining Corporation filed a statement in support of the Intermediate Report.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the briefs and statement, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following addition and modifications:

I

As set forth in the Intermediate Report, in April, 1946, the Board conducted an election among the Company's employees, and issued a certification in favor of Stone Workers. Thereafter, commencing in May of that year, the Company and Stone Workers executed an uninterrupted succession of collective bargaining agreements, the fourth of which, by an amendment executed late in 1950, was made effective until January 15, 1953, and from year to year thereafter unless modified or terminated by 60-days' notice.

In the fall of 1952, Respondent Holloman, with the help of District 50, organized the Tungsten Mining Local of UMW at the Company's plant. Holloman was elected president of the Local.

While Tungsten Mining Local was being organized, and thereafter, meetings were held with the Company's employees. At these meetings, representatives of District 50 made a series of speeches in which they pointed out that

UMW did not use the facilities of the Board to settle representation questions, and said that they would probably call a strike if UMW could not get recognition in any other way.

On October 3, Respondent Fohl, Regional Director of District 50, and other representatives of District 50 asserted to the Company that UMW represented a majority of the Respondent's employees, and requested that the Company recognize UMW as bargaining representative. The claim was coupled with a threat to strike if UMW was not recognized. Having ascertained that a majority of its employees had authorized dues check-offs in favor of Stone Workers, the Company advised Fohl that Stone Workers was the certified representative of its employees and that the Company would continue to recognize it as such until another bargaining agent was certified by the Board.

Thereafter, on October 22, 1952, Fohl advised the Company that UMW's purpose would be achieved by "economic action, if necessary," asserting that UMW was determined to "kick out an unwanted union by our own strength." On October 30, 1952, Fohl sent the Board a letter to advise it of the "situation," warning that UMW intended to protect the interests of the Company's workers "by every moral and legal means at our disposal, including that of strike action, if necessary."

In mid-November, 1952, Stone Workers notified the Company that it wished to end the existing contract and proposed that a new contract be negotiated. On December 18, 1952, the Company and Stone Workers executed a new contract to become effective on January 15, 1953, the terminal date of the existing contract.

On January 9, 1953, the Company discharged two employees, including Holloman, who thereupon spoke with other members of the Local. They agreed to strike in protest against the discharges. The strike began at 6:00 p.m.

At 7:00 p.m. representatives of District arrived at the Company's plant.

On January 10, 1953, Holloman and Fohl prepared a press release announcing that "recognition of the UMW would be an additional purpose of the strike." The strike continued for sometime thereafter and continued to have as one of its avowed purposes the recognition of UMW or District 50 by the Company as the bargaining representative of its employees.

On January 9, 11, 12, 13 and 20, a series of coercive acts, by strikers, described in detail in the Intermediate Report, occurred at or in the vicinity of the picketing. These acts consisted of threats, express or implied, directed against nonstrikers; the blocking of a road to the plant, and an assault upon a nonstriker in the presence of other nonstrikers.

On January 12, 13, 16, and 19, other coercive acts, also described in detail in the Intermediate Report, occurred away from the picket lines. These acts consisted in trailing, threatening, and assaulting nonstrikers and firing shots into the house of a nonstriker. One threat directed against a non-striker was made by Respondent Holloman himself.

On January 14, 1953, a State Court enjoined various "unlawful acts" by strikers. The Injunction was read to the pickets by a representative of District 50, who admonished the pickets to comply therewith.

During the strike, representatives of District 50 were present at the picket lines; gave Holloman "instructions" and "suggestions" in running the strike; distributed signs and buttons among the pickets bearing the name of District 50; paid the rent for premises which were used as strike headquarters; and, with District 50 funds, posted bond for strikers accused by State authorities of criminal acts. One of the acts for which bond was posted was, as the Trial Examiner found, a coercive act directed against a non-

striker. On January 14, during the course of the strike, a representative of District 50 announced that it was taking over the conduct of the strike.

In addition to his other activities described above, Respondent Fohl was present at the picket lines near the Company's plant and gave advice to Holloman concerning the management of the strike.

As already indicated, Respondent Holloman conferred with, and urged, the employees to begin the strike, and himself threatened a nonstriker with reprisals. He also assisted in "running" the strike; kept records pertaining to picketing; and was himself present at the picket lines.

II

We agree with the Trial Examiner's conclusion that the age of Stone Workers' certification does not preclude a finding that the strike for recognition of UMW violated Section 8 (b) (4) (C) of the Act.

Section 8 (b) (4) (C) provides in pertinent part that:

> It shall be an unfair labor practice for a labor organization or its agents . . . to engage in . . . a strike . . . where an object thereof is . . . forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of Section 9.

As stated above, Stone Workers was certified by the Board as the bargaining representative of the Company's employees in May 1946, and the strike for the recognition of the UMW occurred in January 1953. At issue before the Board, therefore, is whether Stone Workers was, at the time of the strike, still a "certified" labor organization within the meaning of the quoted language of Section 8 (b) (4) (C).

That language places no time limitation on the duration of a certification otherwise entitled to the protection of that section. Nor does the legislative history of the Act reveal that the Congress intended, or even considered, such a limitation.[1]

The Respondents, however, contend in effect that the language of the statute should not be applied in this case. They argue that Stone Workers' certification was not valid in 1953 because "the strike and majority participation [in the UMW] rebut any presumption of such continued existing certification." This contention is apparently founded upon the Board's doctrine with respect to an employer's obligation to bargain under Section 8 (a) (5) of the Act. In that context, the Board has held that the majority status of a certified union, absent unusual circumstances, is conclusively presumed to continue for one year after certification; thereafter, the presumption is rebuttable and the employer may in good faith question the union's majority status.[2]

We need not, however, here decide whether or not this doctrine is applicable to Section 8 (b) (4) (C) of the Act. For even were we to concede that point, the Respondents' contention still would have no merit. There is no evidence in the record to show, as the Respondents assert, that a majority of the Company's employees participated in the recognition strike. The evidence shows only that there was a strike, that the Company continued to operate its mine, and that a number of employees did not participate in the strike. There is nothing else to show that UMW was the representative of a majority of the Company's employees

[1] The history of the provision indicates only that Section 8 (b) (4) (C) was intended to proscribe conduct, such as a strike, which bypasses the Board's machinery for the peaceful settlement of disputed representation questions. See *H. R. Rep. No. 245*, 80th Cong., 1st Sess. pp. 6, 44 (1947).

[2] See, e.g., *Celanese Corporation of America*, 95 NLRB 664.

either before or during the strike. In this connection, the record shows only that a bare claim was pressed upon the Company that the UMW represented the majority of its employees, but no supporting evidence thereof was adduced. Indeed, the only evidence there is on the question consists in the voluntary authorization of dues check-offs in favor of Stone Workers, which supports, rather than rebuts, the presumption that the Stone Workers continued to be the majority representative of the Company's employees at the time of the strike.

We need not and do not here determine whether there are any circumstances under which a union may lawfully strike for recognition if another union has once been granted a certificate which has not been superseded or revoked. We hold that, under the circumstances of this case, the certification was still outstanding and the strike for recognition was a clear violation of Section 8 (b) (4) (C).[3]

III

We agree with the Trial Examiner that all 4 respondents were responsible for the strike and thereby violated Section 8 (b) (4) (C) of the Act. Respondents Fohl and Holloman, either themselves or through persons acting under their direction and control, induced or encouraged employees of the Company to engage in the strike which had as an object forcing the Company to recognize UMW as representative of its employees. As stated above, and set forth in more detail in the Intermediate Report, Holloman instigated the strike of January 9, Holloman and Fohl jointly decided on January 10 to adopt as one of the objects of the strike recognition of UMW Holloman, with Fohl's

[3] Chairman Farmer is of the view that a union which strikes for recognition in the face of an outstanding certification—which is still recognized as valid by the employer and certified union—has no standing to contest the majority status of the certification. He is of the opinion that the statutory prohibition expressed in Section 8 (b) (4) (C) was intended in these circumstances to be absolute.

advice, managed the strike and attendant picketing, and Holloman himself on January 12 orally solicited a non-striker to join the strike.

We find also that, in engaging in the foregoing conduct, both Holloman and Fohl acted within the scope of their authority as agents of the Local and District 50, respectively. Holloman was the president of the Local, which had been organized under the auspices of UMW for the purpose of representing the employees. In view of his position in the Local, it is proper to infer that he had authority to call and conduct the strike in the instant case with its avowed purpose of obtaining recognition for UMW. There is nothing in the record to rebut this inference. On the contrary, the record shows that the strike was called only after Holloman had consulted with, and obtained the approval of, other members of the Local, and Holloman's press release of January 10 announcing that recognition of UMW was a purpose of the strike was not repudiated by the Local.

Fohl was Regional Director of District 50 UMW, and his letters to the Company and the Board threatening strike action unless the Company recognized UMW were written on stationery bearing a District 50 letterhead. Funds of District 50 were used to supply bail for arrested strikers. Representatives of District 50 other than Fohl gave financial support to the strike, supplied the pickets with signs demanding recognition and bearing the name of District 50, and on January 14 these representatives publicly announced that District 50 was taking over the conduct of the strike. No evidence was offered to rebut the inference arising from these facts that Fohl was empowered by District 50 to seek recognition for it or its affiliated locals from employers within his jurisdiction, that to achieve such recognition, Fohl and the other representatives of District 50 were authorized to call or, as in the instant case, conduct and support a strike, and that in any event the action of Fohl and

the other District 50 representatives in the instant case was ratified by District 50.

We find therefore that all 4 Respondents were responsible on and after January 10 for conducting a strike for recognition of UMW, thereby violating Section 8 (b) (4) (C) of the Act.

IV

We agree with the Trial Examiner that all four Respondents were responsible for the conduct by strikers and pickets both at and away from the picket line, found by the Trial Examiner to be coercive, and that all Respondents therefore violated Section 8 (b) (1) (A) of the Act.

However, in imputing responsibility for such conduct to the Respondents we do not adopt the Trial Examiner's reasoning insofar as it predicates such responsibility on the fact that the Respondents engaged the services of the pickets. We do not consider it necessary to decide whether by the mere fact of "engaging" pickets or establishing picket lines a union or union official incurs responsibility for all conduct by the pickets in furtherance of the purpose of the picketing. The record shows other grounds for holding the Respondents liable for the misconduct of the pickets and strikers, on which we rely.

Respondent Holloman, as we have found above, had general authority, as president of the Local, to call and conduct the strike. We find, therefore, that the Local was responsible for his conduct in threatening Self, a non-striker, at his home with reprisals unless he joined the strike,[4] and that by this threat alone, Holloman and the Local violated Section 8 (b) (1) (A) of the Act.

In addition, in making the foregoing threat, Holloman indicated that he was aware of the generally coercive nature

[4] See *Sunset Line and Twine Co.*, 79 NLRB 1487, 1510.

of the picketing; for he warned Self that if he reported for work during the strike he would run the risk of reprisals by "the boys."

While there is no evidence that Holloman actually witnessed the acts of violence and intimidation found by the Trial Examiner to be coercive, they occurred under such circumstances that they could not have failed to come to his attention. Some of these incidents involved from 50 to 100 pickets. They were committed for the most part in public places, in the presence of onlookers, and in at least one instance in the presence of UMW representatives. The incidents continued over a period of 11 days. Under these circumstances, we find that Holloman was aware of many, if not all, the instances of coercion described by the Trial Examiner, and that it became his duty as the one who, by his own admission, "ran" the strike to repudiate such misconduct and take disciplinary action against the persons responsible therefor.[5] Instead, he himself engaged in similar misconduct of the same general character.

We find, under these circumstances, that Holloman, acting within the scope of his authority, as president of the Local, acquiesced in and condoned the misconduct of the other pickets and strikers, and that both Holloman and the Local thereby violated Section 8 (b) (1) (A) of the Act.

For similar reasons, we find that Respondent Fohl, who, as Regional Director of District 50, participated in the conduct of the strike, and, like Holloman, took no effective

[5] The Trial Examiner found that Holloman was one of those who on January 9 admonished the other pickets to keep order on the picket line. However, Holloman, although in charge of the strike, took no action against those responsible for the extensive and flagrant acts of violence. The fact that union officials may have forbidden coercive conduct does not relieve them of responsibility therefor, particularly when they themselves, as in the case of Holloman, have participated therein. *Cory Corporation*, 89 NLRB 572, 978.

action to prevent the extensive and numerous acts of coercion by pickets and strikers which could not have escaped his notice, was responsible for such acts. We find, therefore that Fohl and District 50 thereby violated Section 8 (b) (1) (A) of the Act.

Additional reason for holding District 50 responsible for such coercive acts consists in the fact that District 50 and the Local, as co-sponsors of the strike and picketing, were engaged in a joint venture, thereby rendering District 50 responsible for all the acts which we have attributed to the Local and Holloman.[6]

V

Unlike the Trial Examiner, we find that the Respondents did not violate Section 8 (b) (1) (A) of the Act solely by reason of the calling of the strike for recognition in violation of Section 8 (b) (4) (C). A violation of Section 8 (b) (4) (C) of the Act is not *per se* a violation of Section 8 (b) (1) (A).[7]

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the

---

[6] See *Smith Cabinet Manufacturing Co., Inc.*, 81 NLRB 886, 889; *Sunset Line & Twine Co.*, 79 NLRB 1487; *Irwin-Lyons Lumber Co.*, 87 NLRB 54, 78. Except for the acts committed by Holloman, *Member Houston* would not hold any of the Respondents responsible for the coercive acts committed by strikers. He believes that the Board's finding in this respect is necessarily predicated upon an assumption that the strikers and pickets who committed the coercive acts were the "agents" of the unions—an assumption which the Board has heretofore not made. *Cory Corporation*, 84 NLRB 972, 978; *Smith Cabinet Mfg. Co., Inc.*, 81 NLRB 886, 891.

[7] See *Perry Norvell Co.*, 80 NLRB 225; *Watson's Specialty Store*, 80 NLRB 533, 539; *National Maritime Union of America*, 78 NLRB 971.

Respondent District 50, United Mine Workers of America, its officers, representatives and agents, including the Respondent Robert R. Fohl, and the Respondent Tungsten Mining Local of United Mine Workers of America, its officers, representatives and agents, including the Respondent William Cordell Holloman, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging the employees of the Tungsten Mining Corporation to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or to perform any services, where an object thereof is to force or require the Tungsten Mining Corporation to recognize or bargain with District 50, United Mine Workers of America, or with Tungsten Mining Local of United Mine Workers of America, or with United Mine Workers, as the representative of the employees of said Company, so long as United Stone and Allied Products Workers of America, CIO, or any labor organization other than District 50, United Mine Workers of America or Tungsten Mining Local of United Mine Workers of America, has been certified as the representative of such employees under the provisions of Section 9 of the Act.

(b) Assaulting and threatening to assault or otherwise to restrain or coerce employees of the Tungsten Mining Corporation.

(c) Trailing employees of Tungsten Mining Corporation and physically preventing them from working.

(d) In any other manner restraining or coercing employees of the Tungsten Mining Corporation in the exercise of the rights guaranteed in Section 7 of the Act, including the right to refrain from any or all concerted activities, as guaranteed by said section.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post in conspicuous places at their business office and meeting places in the vicinity of Tungsten Mining Corporation, Vance County, North Carolina, including all places where notices to members are customarily posted, copies of the notice attached hereto as an Appendix.* Copies of such notice to be furnished by the Regional Director for the Eleventh Region, shall, after being duly signed by representatives of the Respondent Unions and individually by Respondents Fohl and Holloman, be posted by these Respondents immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(b) Mail to the Regional Director for the Eleventh Region copies of the notice attached hereto as an Appendix, for posting, the Company consenting on the bulletin boards of Tungsten Mining Corporation, Vance County, North Carolina, where notices to employees are customarily posted. The notices shall be maintained on the Company's bulletin boards for a period of sixty (60) consecutive days thereafter. Copies of said notice, to be furnished by the Regional Director for Eleventh Region, shall, after being signed as provided in paragraph 2(a) of this Order, be forthwith returned to the Regional Director for such posting;

---

* In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

(c) Notify the Regional Director for the Eleventh Region in writing, within ten (10) days from the date of this Order, what steps they have taken to comply herewith.

Signed at Washington, D. C.

GUY FARMER,
Chairman
JOHN M. HOUSTON,
Member
ABE MURDOCK,
Member
IVAR H. PETERSON,
Member
National Labor Relations Board

(SEAL)

United States Constitution, Fifth Amendment:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

National Labor Relations Act, as amended, Section 1, Last Paragraph:

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred

by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." 61 Stat. 136; 29 U.S.C. 151.

Section 2(1)—Definitions:

"When used in this subchapter—

"(1) The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers." 61 Stat. 137; 29 U.S.C. 152(1).

Section 7:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a)(3)." 61 Stat. 140; 29 U.S.C. 157.

Section 8 (a)(5):

"(a) It shall be an unfair labor practice for an employer—

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title." 61 Stat. 140; 65 Stat. 601; 29 U.S.C. 158.

Section 8 (b)(4)(C):

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

"(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;" 61 Stat. 140; 65 Stat. 601; 29 U.S.C. 158.

Section 9 (a):

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment." 61 Stat. 143; 65 Stat. 601; 29 U.S.C. 159.

Section 9 (B)(3):

"(3) No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election." 61 Stat. 143; 65 Stat. 601; 29 U.S.C. 159.

Section 13:

"Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right." 61 Stat. 151; 29 U.S.C. 163.

Section 303 (a)(3) and (b):

"(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

"(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit." 61 Stat. 158; 29 U.S.C. 187.

Rule 52(a), Federal Rules of Civil Procedure, 28 U.S.C.A.

"(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b). As amended Dec. 27, 1946, effective March 19, 1948.

Conclusion of Brief of District 50 on Petition for Enforcement of an Order of the National Labor Relations Board:

"It is, therefore, respectfully submitted that the Court should deny the petition of the National Labor Relations Board for the reasons that:

1. The question is moot, and

2. There has already been substantial compliance by respondents with the Board's order.

It is earnestly contended that nothing good or equitable could come from the enforcement of such an order. The Local Union is non-existent, the alleged unfair labor practices ceased long before the Board hearings, and the issues are dead and almost forgotten. Probing old wounds will do nothing to improve labor relations, and respondents sincerely believe that neither the company, the workers, nor the public would be well served by the enforcement of a vain and futile order."

Office - Supreme Court, U.S.
FILED
JUL 19 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

NO. [redacted] 202

DISTRICT 50, UNITED MINE WORKERS OF AMERICA,

Petitioner

vs.

TUNGSTEN MINING CORPORATION,

Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for The Fourth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

F. L. FULLER, JR.
Durham, North Carolina

A. W. GHOLSON, JR.
Henderson, North Carolina

WHITEFORD S. BLAKENEY
Charlotte, North Carolina

Attorneys for the Respondent

Page

QUESTIONS PRESENTED 1

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

ARGUMENT 5

I. The Defendant Violated Express Provisions Of The Labor-Management Relations Act By Engaging In A Strike To Obtain Recognition As Bargaining Agent Of The Plaintiff's Employees At A Time When Another Labor Organization Held A Labor Board Certification As Exclusive Agent Of These Employees 5

II. The Unlawfulness Of The Strike Is Not Altered By The Fact That The Plaintiff's Employees May Have Shifted Allegiance From The Certified Union To The Defendant Union 8

CONCLUSION 16

CITATIONS

Cases:

Brooks vs. National Labor Relations Board, 348 U. S. 96, 104 9, 12

District 50, United Mine Workers of America vs. National Labor Relations Board, 234 F. 2d 505 (C. A. 4) 14

National Labor Relations Board vs. District 50, United Mine Workers of America (C. A. 4) No. 6738 15

Parks vs. Atlanta Printing Pressmen and Assistants' Union, 243 F2d 284 (C. A. 5) 9, 11-12, 13

Parks vs. Atlanta Printing Pressmen and Assistants' Union, F. Supp. 38 LRRM 2531 (N. D. Ga.) 10

Tungsten Mining Corporation vs. District 50, United Mine Workers of America, 242 F2d 84, 88 (C. A. 4) 8

Tungsten Mining Corporation vs. District 50, United Mine Workers of America, 142 F. Supp. 800 (E. D. N. C.) 10

United Mine Workers of America vs. Arkansas Oak Flooring Company, 351 U. S. 62, 75 11, 14

United Mine Workers of America vs. Patton, 211 F2d 742, 746-748 (C. A. 4) 7

Statutes:

29 U.S.C.A. Section 158(b)(4)(c) 14

29 U.S.C.A. Section 159(c)(1)(A)(ii) 10, 13

29 U.S.C.A. Section 159(f)(g)(h) 4

29 U.S.C.A. Section 187(a)(3) 2, 5, 15

29 U.S.C.A. Section 187(b) 2

Miscellaneous:

HR Conf. Rep. No. 510, 80th Cong., 1st Sess. 43 11

Report of the Joint Committee on Labor-Management Relations No. 986, Pt. 3, 80th Cong., 2nd Sess. 71 11

S. Rep. No. 105, 80th Cong., 1st Sess. 27 11

Supreme Court of the United States

OCTOBER TERM, 1956

NO. 1100

DISTRICT 50, UNITED MINE WORKERS OF AMERICA,

Petitioner

vs.

TUNGSTEN MINING CORPORATION,

Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for The Fourth Circuit.

BRIEF FOR THE RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

Where a labor Union has been certified by the National Labor Relations Board as exclusive bargaining representative of employees and where there has been no decertification of such bargaining agency by the Board, nor any effort to obtain such decertification, is it not unlawful for a rival Union to strike to obtain recognition as exclusive bargaining agent of the same employees—even though there be evidence that the employees have transferred their allegiance to such rival Union?

The Court below, and another Court of Appeals as well, having ruled that such a strike is barred by the Labor-Management Relations Act, 29 U.S.C.A. Section 187(a)(3), and there being no disagreement among the Appellate Courts on the matter, should this Court now grant certiorari to review such ruling?

STATUTORY PROVISIONS INVOLVED

"It shall be unlawful . . . for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike . . . where an object thereof is . . . forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of Section 159 of this title."

29 U.S.C.A. Section 187(a)(3)

"Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States . . . and shall recover the damages by him sustained and the cost of the suit."

29 U.S.C.A. Section 187(b)

STATEMENT OF THE CASE

The plaintiff, now Respondent before this Court, operates a tungsten mine and processing plant in Vance County, North Carolina. In 1946 the National Labor Relations Board conducted an election among the plaintiff's employees, in which a majority of the employees voted to be represented by a labor organization, the United Stone

Workers and Allied Products Workers of America, CIO. Thereafter the Stone Workers Union was officially certified by the Labor Board as bargaining representative of the plaintiff's employees and after negotiations a contract was signed between that Union and the plaintiff Company (12, 22)[1].

For several years thereafter renewal contracts were negotiated and such a contract existed between the Stone Workers Union and the plaintiff at the time of the strike here in question (12, 107, 108). There is no contention but that relations between the Stone Workers Union and the plaintiff were at arms length, some of the renewal contracts between them having been arrived at only after lengthy negotiations, threats of strike and mediation (29, 44).

In October of 1952 representatives of the defendant, District 50, United Mine Workers of America, now Petitioner before this Court made claim to the plaintiff that their Union represented the plaintiff's employees and demanded that the plaintiff recognize and deal with the defendant as exclusive bargaining representative of the employees. The plaintiff declined to accord such recognition to the defendant Union.

There is conflicting evidence as to whether a majority of the plaintiff's employees had in truth transferred allegiance from the Stone Workers Union to the defendant Union. The Company had in its files check-off cards, signed by the great majority of its employees, authorizing the Company to deduct dues for the Stone Workers Union from their pay (42, 58, 63). Employees were at

---

[1] Unless otherwise indicated, all page references are to the printed Appendix to the Respondent's brief filed in the Court below.

liberty to revoke these check-off cards by notice to the Company at any time (58). Only a few ever did so (65).

Representatives of the defendant Union asserted to the Company, however, that a majority of the employees had "signed up" with the defendant (57). But the defendant did not petition the National Labor Relations Board for an election to decertify the Stone Workers Union or to have itself certified as representative of the employees. The defendant conceded that in fact it could not do so, the facilities of the National Labor Relations Board being closed to it because of its non-compliance with the filing requirements of the Labor-Management Relations Act[1] (13, 57, 89). Nor was any petition filed by or on behalf of the employees for decertification of the Stone Workers Union.

After the defendant's request for recognition was made and refused, its organizational efforts among the plaintiff's employees were nevertheless steadily continued (15). On January 9, 1953 a strike among plaintiff's employees commenced. Promptly the defendant espoused this strike and proclaimed the recognition of the defendant Union as agent of the employees to be a principal purpose of the strike (117, 118, 119, 120, 121, 122).

It is substantially uncontested that this strike was directed, sustained and carried on by the defendant Union and that a major object of the strike was to compel the plaintiff to recognize the defendant as the bargaining agent of the employees. The circumstances establishing this are hereinafter more fully set forth.

The strike was accompanied by a great deal of violence (15). The cessation of production constituted, however,

---

[1] 29 U.S.C.A. Section 159 (f), (g) and (h).

the substantial damage to the plaintiff's business, for which recovery is sought in the present action. The plaintiff's case therefore rests upon its contention that the strike was a strike in violation of law.

ARGUMENT

I. The Defendant Violated Express Provisions of the Labor-Management Relations Act By Engaging In A Strike To Obtain Recognition As Bargaining Agent Of The Plaintiff's Employees At A Time When Another Labor Organization Held A Labor Board Certification As Exclusive Agent Of These Employees.

As has been noted above, the Labor-Management Relations Act, 29 U.S.C.A. Section 187(a)(3), provides that:

> "It shall be unlawful . . . for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike . . . where an object thereof is . . . forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of Section 159 of this title."

This Statute would seem to be plain and clear. It applies precisely to the factual situation of the present case.

It is undenied that "another labor organization" than the defendant Union, namely the Stone Workers Union, had been "certified as the representative" of the plaintiff's employees. It likewise cannot be disputed that despite the certification outstanding to the Stone Workers Union, the defendant Union did "engage in" and "encourage the employees" of the plaintiff "to engage in a strike" and

that "an object thereof" was "forcing or requiring" the plaintiff "to recognize or bargain with" the defendant Union "as the representative" of the plaintiff's employees. If there should be any question as to whether such was the situation here, the facts may be readily summarized.

Shortly after representatives of the defendant requested the plaintiff to recognize the defendant as bargaining agent of the plaintiff's employees, the defendant's Regional Director wrote to the National Labor Relations Board stating "as a matter of record" that his "organization" intended to press its claim for recognition by every means "including that of strike action if necessary" (116, and 57). On the day after the strike began, the defendant's Regional Director wrote out a "press release," which was published in the local newspaper, stating that the strike "in addition" to being in protest against the discharge of two employees, would "also be a strike for recognition of the United Mine Workers of America" (117 and 85, 90, 100).

Promptly thereafter the defendant opened nearby a strike headquarters, with a prominent sign in front of it reading: "District 50—United Mine Workers of America —Strike Headquarters" (118 and 39, 76). During the strike representatives of the defendant were continually at and around the plaintiff's premises (15, 93, 94). They caused picket signs to be there set up, all of which bore the words: "On Strike" and all of which also bore the name: "District 50, United Mine Workers of America" (119, 120, 121, 122 and 63, 64, 76, 84, 90, 91 93). Some of these signs read: "On Strike—For Recognition, Better Wages and Conditions of Employment—District 50, United Mine Workers of America" (120, 121). The District Court found as a fact that "the Union furnished picket signs demanding recognition" and that the defend-

ant "formally adopted" the strike "for the purpose of getting recognition" (15). The defendant's representatives held meetings with the strikers (94) and arranged bonds for those who were indicted for acts of violence (78, 79).

The defendant Union headed the list of defendants against whom an injunction was issued, because of strike violence, by the Superior Court of Vance County, North Carolina (15). Tungsten Local Union, United Mine Workers of America was the sole defendant named in an injunction issued by the District Court, in which the Union was ordered to halt the strike. Upon that injunction issuing against the Union defendant, the strike did end (15).

In view of such facts, the defendant cannot seriously contend that it did not "engage in" or "encourage" the plaintiff's employees "to engage in" the strike. Nor can the defendant deny that "an object" of the strike was to put pressure on the plaintiff "to recognize or bargain with" the defendant "as the representative" of plaintiff's employees.

As is pointed out in *United Mine Workers of America vs. Patton*, 211 F2d 742, 746-748 (C. A. 4), where such facts as outlined above are present, in order to impute strike responsibility to a labor Union, it is certainly not necessary to produce an official resolution of the Union "authorizing or ratifying" the strike.

The Court below thus summarizes the matter:

> "Whether or not District 50 induced the employees of Tungsten initially to strike, it certainly encouraged them in the strike, and was itself engaged in the strike at least after January 14, 1953. One of the purposes of the strike was to force or require Tungsten to bargain with District 50 as the representative of

> Tungsten's employees. During all the time in question, another labor Union, Stone Workers, had been certified by the Board as the exclusive collective bargaining representative of Tungsten's employees. That certification had not and has not been revoked. The case would seem to come literally and exactly within the coverage of Section 187(a)(3) supra."
>
> *Tungsten Mining Corporation vs. District 50, United Mine Workers of America* 242 F2d 84, 88 (C. A. 4)

Since there was here a strike which the defendant engaged in, an object of which was to force the plaintiff to recognize the defendant as bargaining agent of the plaintiff's employees, whereas another labor organization had been certified by the National Labor Relations Board as such agent, and since the Statute plainly and expressly declares that a strike in such circumstances is unlawful and that whoever is injured in his business by such a strike can recover therefor—is the case not thus concluded?

II. The Unlawfulness Of The Strike Is Not Altered By The Fact That The Plaintiff's Emloyees May Have Shifted Allegiance From The Certified Union To The Defendant Union.

To all of the foregoing the defendant makes the following answer:—that the Statute is not to be enforced as written, but that there is to be added to it by implication or interpretation a proviso to the effect that an outstanding certification to "another labor organization" is not intended to bar a strike on the part of a Union seeking recognition if the circumstances are such that the employer could legally accord recognition to the new claimant. It is respectfully submitted that the Statute cannot thus lightly be rewritten. And such is the holding, not only of the Court below but also of the only other Appellate Court which

has considered the question. *Parks vs. Atlanta Printing Pressmen and Assistants' Union*, 243, F2d 284 (C. A. 5).

Despite the conflict of evidence here as to whether a majority of the plaintiff's employees had in fact shifted their allegiance from the Stone Workers Union to the defendant Union, let it be assumed that such was the case. Then upon the defendant's offering to produce evidence to such effect, as it did, and all the circumstances being such that the plaintiff could reasonably have doubted whether a majority of the employees still desired to be represented by the Stone Workers Union—in such situation the plaintiff could lawfully have ceased to recognize the Stone Workers Union as bargaining agent and could have petitioned the National Labor Relations Board for an election in order to determine definitely whether the employees did or did not still desire to be represented by the Stone Workers Union. *Brooks vs. National Labor Relations Board*, 348, U. S. 96, 104. Doubtless the plaintiff, in such situation, could have proceeded to recognize the defendant Union without going through any Labor Board procedure. *Brooks vs. National Labor Relations Board, supra* Perhaps the plaintiff should have done so.

But it does not follow from any of this that the defendant Union was at liberty to strike for recognition—because the Statute unqualifiedly forbade it to do so, the certification to the Stone Workers Union being still outstanding.

The bar of that outstanding certification could readily have been removed, although the plaintiff chose not to petition for its removal and although the defendant Union, by its own choosing, was disqualified to petition for the removal of that bar. The employees themselves, if as the defendant contended they no longer desired to be represented by the Stone Workers Union, could have petitioned

for and obtained through the National Labor Relations Board an official decertification of the Stone Workers Union[1]. If then the plaintiff still refused recognition to the defendant, the defendant would have been free to strike for such recognition. But none of these steps having been taken to cancel the outstanding certification, it stood by clear mandate of the Statute as an absolute bar to any strike for bargaining agency recognition.

The District Court[2], and likewise the District Court, in the case of *Parks vs. Atlanta Printing Pressmen and Assistants' Union*,[3] fell into the error of concluding that since the employer in such situation is free to accord recognition to a new Union claimant, although a certification to another labor organization be outstanding, therefore it must be that the new claimant is free to strike for recognition in the event recognition is not voluntarily accorded by the employer. As expressed by the District Court in the instant case:—"I am of the opinion that Tungsten was at liberty to recognize District 50 . . ." (20).

This the plaintiff concedes, but, as has been emphasized, it does not follow from this that District 50 could strike for recognition. The question is not whether "Tungsten was at liberty to recognize District 50" but whether District 50 was at liberty to strike for recognition. The vital point of the case is that, under the circumstances, the law permitted the employer to accord recognition to the new Union claimant, but under the same circumstances, the Statute positively and unequivocally forbade the new Union claimant to strike for recognition.

---

[1] 29 U.S.C.A. Section 159(c)(1)(A)(iii).
[2] 142 F. Supp. 800 (E. D. N. C.)
[3] F. Supp. , 38 LRRM 2531 (N. D. Ga.)

In *United Mine Workers of America vs. Arkansas Oak Flooring Company*, 351 U.S. 62, 75, this Court recognized that the right of a Union to strike in order to compel an employer to recognize it as exclusive bargaining representative is not limited "except in the face of another Union's certification"[1].

No matter that the Statute in question is plain, positive and unambiguous, the defendant's contention is that by "interpretation" it must be changed to mean that Labor Board certification, though outstanding, is not a bar to a strike for recognization if employee allegiance has shifted. With respect to this, the well-reasoned opinion in *Parks vs. Atlanta Printing Pressmen and Assistants' Union* thus analyzes the matter:

> "At the outset it is significant that Congress in Section 8(b)(4) and 303(a)(3) did not, as it might, speak in terms of a labor organization 'designated' or selected by a majority of the employees' or 'then representing a majority of the employees', or one with whom the 'employer is by law required to bargain collectively'. Such descriptive standards, though capable of tangible delineation, would unavoidably present substantial questions of fact in application. This difficulty was eliminated altogether by using the precise standard of a union which has been 'certified as the representative of such employees under the provisions of section 9 of the Act'" . . .
>
> "Referring, as it did, to certifications under Section 9, Congress must have intended to include not only

---

[1] In this connection the Court cited—Report of the Joint Committee on Labor-Management Relations, No. 986, Pt. 3, 80th Cong., 2d Sess. 71; S. Rep. No. 105, 80th Cong., 1st Sess. 22; HR Conf. Rep. No 510, 80th Cong. 1st Sess. 43.

the fact of initial certification but the statutory process of altering or terminating a certification. This, of course, specifically covers the exact situation where it is claimed that a certified union no longer represents a majority. Thus, this is not a case in which by judicial action we must fill an inadvertent legislative void. For here machinery is prescribed which fully meets initial and changing needs."

"If the whole thing is equated with the employer's ultimate obligation to bargain, then the fact of certification in determining availability of the remedies of Sections 8(b)(4)(C) and 303(a)(3) becomes virtually immaterial after the first year."

Parks vs. Atlanta Printing Pressmen and Assistants' Union, 243 F2d 284, 287, 289 (C. A. 5)

The reason and policy of Congress' shutting off the use of strike force until there has been decertification by the Labor Board is certainly understandable. As pointed out by this Court in *Brooks vs. National Labor Relations Board*:

"The underlying purpose of this Statute is industrial peace . . . Congress has devised a formal mode for selection and rejection of bargaining agents . . . with a view of furthering industrial stability and with due regard to administrative prudence."

Brooks vs. National Labor Relations Board, 348 U.S. 96, 103

The Court of Appeals in the case of *Parks vs. Atlanta Printing Pressmen and Assistants' Union* emphasized this basic consideration in the following words:

> "Wherever and whenever, the policies of the Act would be infringed, thwarted, or impeded by continued recognition of a prior certification, a ready and workable means is at hand to rescind it. That machinery is simple and available and assures that if, as will generally be the case, there is dispute and controversy over the necessity and desirability of decertification and change, the facts can be surveyed by the Board as a disinterested tribunal" . . .
>
> "And the principal distinction is again the fundamental difference between determination of the controversy in a deliberative forum with its appeal to a reasoned, impartial consideration of reliable facts as opposed to decision wrought by the unleashing of native jungle forces of sheer economic power with the likelihood, if history is to be our guide, that where spirits are high and feelings deep, economic pressure may soon have physical power as an ally."
>
> *Parks vs. Atlanta Printing Pressmen and Assistants' Union*, 243 F2d 284, 287, 289 (C. A. 5)

It must be kept in mind that the District Court in the present case was completely in error when it said that except by resorting to strike "no other avenue of relief was open to the defendant and the majority of the employees which it represented. Recourse to the Board was not available . . ."(20). Though the plaintiff Company had not seen fit to petition for cancellation of the outstanding certification and though the defendant Union, of its own choosing, had not qualified to do so, still, as has been emphasized, the employees were completely free and able to do so[1]. The District Court was simply mistaken in

---

[1] 29 U.S.C.A. Section 159(c)(1)(A)(ii).

thinking that "recourse to the Board was not available" and that the employees and the defendant "had no other avenue of relief", except to strike in the face of the outstanding certification.

Further, the District Court observed that although the defendant Union chose not to use the facilities of the Labor Board, it "was not precluded from representing employees as bargaining representative" (20). *United Mine Workers of America vs. Arkansas Oak Flooring Company*, 351 U.S. 62. *District 50, United Mine Workers of America vs. National Labor Relations Board*, 234 F2d 565 (C. A. 4). This is correct but it must be repeated that the issue in the present case is not whether this Union had capacity or standing to be the bargaining agent of the plaintiff's employees. The one and only issue is whether this Union was at liberty to strike for recognition as the bargaining agent of the plaintiff's employees, while the certification to the Stone Workers Union remained outstanding. This issue the Statute answers, plainly and without equivocation, in the negative. And for its disregard of the Statute's provisions, the defendant is, by the same Statute, expressly made liable in damages.

In the instant case there are these additional remarkable circumstances. In ruling for the defendant the District Court not only disregarded the clear and simple mandate of the Statute, but the District Court also apparently overlooked the fact that it had itself ordered (15) the defendant Union to end the very strike which is here in question, upon the ground that such strike was forbidden by provisions in the unfair labor practice section of the Act, identical to those now under consideration, 29 U.S.C.A. 158(b)(4)(c). If this strike was unlawful under 29 U.S.C.A. Section 158(b)(4)(c), then why was it not unlawful under the identical language of the later section,

in the same Statute, that is, 29 U.S.C.A. Section 187(a)(3)? If the strike was so unlawful as to require its being altogether halted by an exercise of the District Court's injunctive power, then how was it ruled lawful by the same Court in a suit for damages?

Not only did the District Court disregard this inconsistency, but likewise it took no note of the fact that after it had ordered the strike ended upon grounds of its being unlawful, the Labor Board rendered a final Decision and Order, in which it found and concluded that the strike had been unlawful under the unfair labor practice section of the Act, which, it should be repeated, is entirely identical in its provisions to the section upon which the present action is brought. Lastly, there is to be added the fact, also disregarded by the District Court, that the Court of Appeals for the Fourth Circuit affirmed the Decision and Order of the Labor Board in that proceeding[1], thereby placing final confirmation upon the conclusion that the strike in question was unlawful. Yet, in the face of all this, the District Court later, in the present case, adjudged the same strike to be lawful! In such situation the Court below rightly reversed the action of the District Court.

CONCLUSION

The Appellate Courts being in agreement with respect to the question here at issue and upon all of the foregoing

---

[1] *National Labor Relations Board vs. District 50, United Mine Workers of America*, C. A. 4—No. 6738.

it being manifest that their ruling on this issue is correct, it is respectfully submitted that such ruling should not now be disturbed and that the Petition for Certiorari should be denied.

Respectfully submitted,

F. L. FULLER, JR.
Durham, North Carolina

A. W. GHOLSON, JR.
Henderson, North Carolina

WHITEFORD S. BLAKENEY
Charlotte, North Carolina

Attorneys for the Respondent